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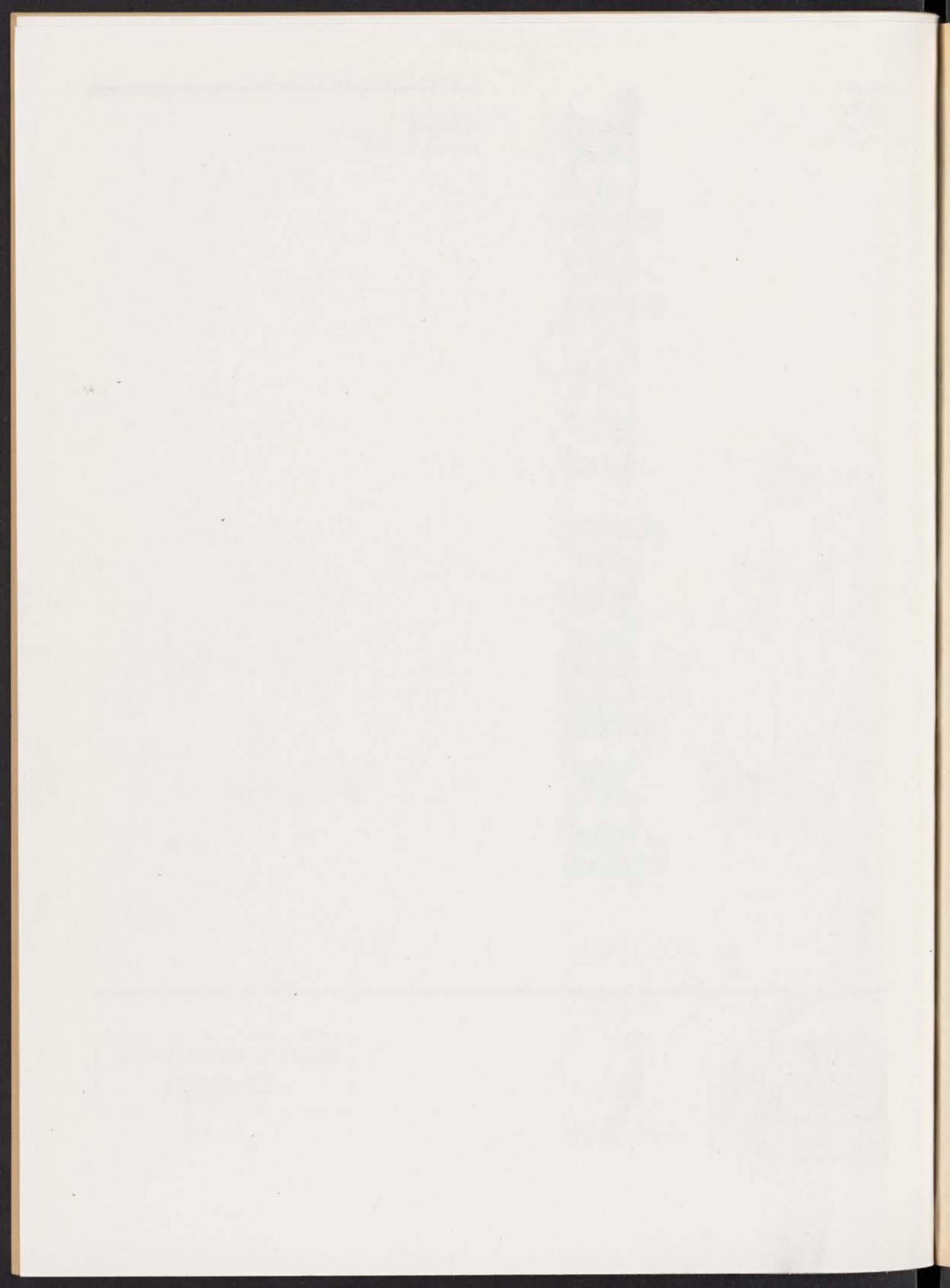
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Federal Register

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Monday, March 4, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

72 CFR Part 918

[Docket No. FV-91-237FR]

Expenses and Assessment Rate for Marketing Order Covering Peaches Grown in Georgia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 918 for the 1991-92 fiscal period (March 1, through February 29) established for that order. The action is needed for the Georgia Peach Industry Committee (committee) to incur operating expenses during the 1991-92 fiscal period and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1991, through February 29, 1992.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 918 (7 CFR part 918), regulating the handling of fresh peaches grown in Georgia. The order is effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 20 handlers of Georgia peaches regulated under this marketing order each season, and approximately 150 peach producers in Georgia. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of Georgia peaches may be classified as small entities.

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

persons have an opportunity to participate and provide input.

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

The committee met on November 28, 1990, and unanimously recommended 1991-92 fiscal period expenditures of \$18,000 and an assessment rate of \$0.01 per bushel of assessable peaches received by handlers. This compares with the 1990-91 projected budget of \$18,450, based on an assessment rate of \$0.005.

The 1991-92 budget projects an estimated assessment income of \$16,000, based on shipments of 1,600,000 bushels. The 1990-91 budget projected an assessment income of approximately \$6,600 on 1.3 million bushels. In addition to the projected assessment income, additional funds will be made available by drawing \$750 from the reserve account (\$9,700 in 1990-91); \$750 interest on the reserve account (\$1,500 in 1990-91), and \$500 received from miscellaneous income (\$650 in 1990-91). The committee's reserve is well within the amount authorized by the program.

The fee paid to the Georgia Farm Bureau Marketing Association (GFBMA) to manage the committee for the fiscal period is increased from \$10,000 to \$12,000. However, this increase will be offset by deletions or reductions in individual budget items such as mileage and telephone charges, recording of minutes, stationery/supplies and postage. One budget item, "Miscellaneous Expenses," is increased from \$600 to \$1,200 because the committee anticipates program expenses in such areas as developing and evaluating new sizes and designs of containers.

Notice of this action was published in the Federal Register on January 11, 1991 (56 FR 1124). The comment period ended February 11, 1991. No comments were received.

While this action may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all the relevant matter presented, including the information and recommendations submitted by the committee, it is found and determined that this final rule will tend to effectuate the declared policy of the Act.

The budget and assessment rate approvals for the Committee should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a committee basis. The 1991-92 fiscal period begins March 1, 1991. Therefore, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 918

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 918 is amended as follows:

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR part 918 continues to read as follows:

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

2. New § 918.227, is added to read as follows:

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

§ 932.227 Expenses and assessment rate.

Expenses of \$18,000 by the Georgia Peach Industry Committee are authorized, and an assessment rate of \$0.01 per bushel of assessable peaches is established, for the fiscal period ending February 29, 1992. Any unexpended funds from the 1991-92 fiscal period may be carried over as a reserve into the 1992-93 fiscal period.

Dated: February 27, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-5039 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 241 and 242

[INS Number: 1411-91]

Elimination of Judicial Recommendations Against Deportation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides for the elimination of Judicial Recommendations Against Deportation consistent with section 505 and section 602 of the Immigration Act of 1990, Public Law No. 101-649, enacted on November 29, 1990. This rule also provides for the continued validity of a Judicial Recommendation Against Deportation granted before the enactment of the Immigration Act of 1990. These changes are necessary to eliminate regulatory language inconsistent with the Immigration Act of 1990.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT:

Kathryn E. Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I Street NW., room 2108, Washington, DC 20536, Telephone: (202) 514-9612; or Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street NW., room 7048, Washington, DC 20536, Telephone: (202) 514-2895.

SUPPLEMENTARY INFORMATION: This rule removes existing 8 CFR 241.1 relating to Judicial Recommendations Against Deportation, redesignates 8 CFR 241.2 as 8 CFR 241.1, and expands 8 CFR 242.16(c). This deletion and expansion is necessitated by sections 505 and 602 of the Immigration Act of 1990 (IMMACT 90) which removed Judicial Recommendations Against Deportation from the Immigration and Nationality Act. Judicial Recommendations Against Deportation were a form of relief available to certain criminal aliens which precluded reliance on the conviction to establish deportability. By foreclosing the availability of a Judicial Recommendation Against Deportation in the criminal court, Congress has limited the relief available to convicted criminal aliens in deportation proceedings.

A sentencing court's Judicial Recommendation Against Deportation granted before November 29, 1990, due notice having been provided, continues to be valid and continues to have the

effect of precluding the use of the conviction to establish deportability. However, a Judicial Recommendation Against Deportation issued on or after November 29, 1990 is ineffectual. No Judicial Recommendation Against Deportation is effective, in any case, against a charge of deportability under section 241(a)(11) of the Act.

The Service has determined that notice and public comment regarding this final rule are unnecessary under 5 U.S.C. 553 (b) and (d). These changes are required to remove a regulation which implemented section 241(b)(2) of the Act that provided for Judicial Recommendations Against Deportation. Section 241(b)(2) of the Act was eliminated by section 505 of IMMACT 90.

In accordance with 5 U.S.C. section 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

List of Subjects

8 CFR Part 241

Administrative practice and procedure, Aliens, Courts, Crime, Deportation.

8 CFR Part 242

Administrative practice and procedure, Aliens, Apprehension, Custody, Detention, Crime.

For the reasons set forth in the preamble, parts 241 and 242 of title 8 of the Code of Federal Regulations are amended as follows:

PART 241—CONTROLLED SUBSTANCE VIOLATIONS

1. The heading for part 241 is revised as set forth above.

2. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357, 8 CFR part 2.

§ 241.1 [Removed]

3. Section 241.1 is removed.

§ 241.2 [Redesignated as § 242.1]

4. Section 241.2 is redesignated as 241.1.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362; 8 CFR part 2.

6. Section 242.16(c) is amended by adding two sentences to the end of the paragraph to read as follows:

§ 242.16 Hearing.

* * * * *

(c) * * *

The respondent shall provide a court certified copy of a Judicial Recommendation Against Deportation to the special inquiry officer when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the respondent. No Judicial Recommendation Against Deportation is effective against a charge of deportability under section 241(a)(11) of the Act or if the Judicial Recommendation Against Deportation was granted on or after November 29, 1990.

* * * * *

Dated: February 5, 1991.

Gene McNary,
Commissioner.

[FR Doc. 91-5023 Filed 3-1-91; 8:45 am]

BILLING CODE 4410-10-10

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 91-004F]

Designation of the State of Maryland Under the Federal Meat Inspection Act and the Poultry Products Inspection Act for Special Purposes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Governor of the State of Maryland has advised this Department that Maryland is no longer in a position to administer meat and poultry inspection programs for special purposes. The Secretary of Agriculture is, therefore, authorized by section 205 of the Federal Meat Inspection Act and section 11(e) of the Poultry Products Inspection Act to assume the responsibility of administering these programs.

DATES: This final rule on notice of designation is effective on March 4, 1991.

Effective date of application of regulation: March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Clerkin, Acting Assistant Deputy Administrator, Compliance Program, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-5804.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. No alternative actions under the law are available to the Department.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. No additional requirements are being imposed on small entities.

Background

Sections 202, 203, and 204 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 642, 643, and 644) provide for recordkeeping, access, and related requirements; registration requirements; and regulation of transactions involving dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or other equines, or parts of the carcasses of such animals that died otherwise than by slaughter, with respect to operators

engaged in specified kinds of businesses in or for "commerce" as defined in the Act. Similar provisions for poultry and poultry products are set forth in section 11(b), (c), and (d) of the Poultry Products Inspections Act (PPIA) (21 U.S.C. 460(b), (c), and (d)).

Section 205 of the FMIA (21 U.S.C. 645) authorizes the Secretary of Agriculture to exercise authorities under the aforesaid sections with respect to persons, firms, and corporations engaged in the specified kinds of businesses but not in or for "commerce" in any State or organized Territory when he determines, after consultation with an appropriate advisory committee, that the State or Territory does not have at least equal to authority under its laws or is not exercising such authority in a manner to effectuate the purposes of the FMIA. Similar authorization is provided in section 11(e) of the PPIA (21 U.S.C. 460(e)) with respect to persons engaged in specified kinds of businesses involving poultry and poultry products. The Governor of the State of Maryland has advised this Department that the State of Maryland is no longer in a position to continue administering authorities under the aforesaid sections after March 30, 1991, with respect to persons, firms, and corporations engaged in the specified kinds of businesses in Maryland, but not in or for "commerce".

The Secretary, after consultation with the appropriate advisory committee, has now determined that the State of Maryland is not exercising, in a manner to effectuate the purposes of said Acts, with respect to businesses, operating wholly within the State of Maryland, authorities at least equal to those under sections 202, 203, and 204 of the FMIA and section 11 (b), (c), and (d) of the PPIA, including the Secretary or his representatives being afforded access to such places of business and the facilities, inventories, and records thereof. Therefore, the State of Maryland is hereby designated under section 205 of the FMIA and section 11(e) of the PPIA for the exercise of the specified authorities with respect to businesses operating wholly within the State of Maryland, and hereafter sections 202, 203, and 204 of the FMIA and section 11 (b), (c), and (d) of the PPIA shall apply as hereafter provided, to persons, firms, and corporations engaged in the kinds of businesses specified in said sections, but not in or for commerce, to the same extent and in the same manner as if they were engaged in such businesses in or for commerce and the transactions involved were in commerce.

Final Rule

For reasons prescribed in the preamble, the Food Safety and Inspection Service is amending 9 CFR parts 331 and 381 as set forth below.

List of Subjects.**9 CFR Part 331**

Designated States, Meat inspection.

9 CFR Part 381

Designated States, Poultry and poultry products.

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 U.S.C. 2.17, 2.55.

§ 331.6 [Amended]

2. The table in § 331.6 is amended as follows:

a. In the "State" column, "Maryland" is added in alphabetical order in all three places.

b. In the "Effective date of designation" column "March 31, 1991" is added on the line with "Maryland" in all three places.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451-470, 7 U.S.C. 2.17, 2.55.

§ 381.224 [Amended]

4. The table in § 381.224 is amended as follows:

a. In the "State" column, "Maryland" is added in alphabetical order in all three places.

b. In the "Effective date" column, "March 31, 1991" is added on the line with "Maryland" in all three places.

After consulting with the appropriate advisory committee, I have determined that it is necessary to designate the State of Maryland in accordance with section 205 of the FMIA and section 11(e) of the PPIA, in order to carry out the Secretary's responsibilities under the Acts. Therefore, it does not appear that any additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding.

Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to public interest.

Done at Washington, DC, on: February 21, 1991.

Lester M. Crawford,
Administrator, Food Safety and Inspection Service.

[FR Doc. 91-5001 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Parts 331 and 381

[Docket No. 91-002F]

Designation of the State of Maryland Under the Federal Meat and Poultry Products Inspection Acts

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Representatives of the Governor of the State of Maryland have advised this Department that the State of Maryland will no longer be in the position to continue administering State meat and poultry inspection programs after March 30, 1991. Accordingly, effective March 31, 1991, all establishments operating under the Maryland meat inspection program shall be subject to the provisions of titles I and IV of the Federal Meat Inspection Act. Additionally, effective March 31, 1991, all establishments operating under the Maryland poultry inspection program shall be subject to sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act. By this designation, the U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of administering the meat and poultry inspection programs with respect to establishments operating, and intrastate operations and transactions, wholly within that State.

EFFECTIVE DATES: This final rule on notice of designation is effective on March 4, 1991.

Effective date of application of regulation: March 31, 1991.

As a result of this amendment, the provisions of titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act will apply to wholly intrastate operations within the State of Maryland on and after March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Lester Nordyke, Director, Federal-State Relations Staff, Inspection

Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-6313.

SUPPLEMENTARY INFORMATION:**Executive Order 12291**

This final rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." The U.S. Department of Agriculture, pursuant to law, is assuming, as of March 31, 1991, the responsibility, previously held by the State of Maryland, of administering the meat and poultry inspection programs with respect to establishments operating, and intrastate operations and transactions, wholly within that State. This action is being taken because the State of Maryland indicated it was no longer in a position to enforce requirements with respect to said establishments at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

Since the State of Maryland has advised the United States Department of Agriculture that the State-operated meat and poultry inspection program will be discontinued due to lack of funding, the Federal Government is mandated by law to assume the responsibilities for the meat and poultry inspection program with respect to establishments operating, and intrastate operations and transactions, wholly within the State. Therefore, no alternative actions under the law are available to the Department.

Effect on Small entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of administering the meat and poultry inspection programs with respect to establishments operating, and operations and transactions, wholly within that State. This action will affect approximately 79 heretofore State

inspected meat and poultry establishments in Maryland, most, if not all, of which may be presumed to be small businesses. However, this is not a substantial number of establishments given the approximately 10,000 small meat establishments and small poultry establishments nationwide, which are either federally or State inspected. Additionally, the application of certain Federal facility and other requirements to such establishments will be flexible insofar as each facility will be reviewed with regard to the circumstances peculiar to that establishment. Furthermore, it is not anticipated that significant costs will be incurred by these Maryland establishments as a result of this action. Those specific establishments for which some upgrading of facilities is indicated will be provided up to 18 months in which to make such changes.

Background

Representatives of the Governor of Maryland have advised this Department that the State of Maryland will no longer be in a position to continue administering a State meat inspection program after March 30, 1991, and have requested the Department to assume responsibility for carrying out the provisions of titles I and IV of the Federal Meat Inspection Act, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered or their carcasses or parts or products thereof, are prepared for use as human food, solely for distribution within such State, and with respect to intrastate operations and transactions concerning meat and meat food products and other articles and animals subject to the Federal Meat Inspection Act, and persons, firms, and corporations engaged therein.

Also, representatives of the Governor of Maryland have advised this Department that Maryland will no longer be in a position to continue administering a State poultry inspection program after March 30, 1991, and have requested the Department to assume the responsibility for carrying out the provisions of sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act with respect to establishments within the State of Maryland at which poultry are slaughtered or poultry products are processed for use as human food, solely for distribution within the State, and with respect to operations and transactions wholly within the State concerning products or other articles and animals subject to the Poultry Products Inspection Act, and persons, firms, and corporations engaged therein.

The Secretary heretofore determined that the State of Maryland had developed and activated requirements at least equal to the requirements under titles I and IV of the Federal Meat Inspection Act, and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act. However, such titles and sections contemplate continuous, ongoing programs, and in view of the termination date now applicable to the Maryland meat and poultry inspection programs, it is hereby determined that Maryland is not effectively enforcing requirements at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act. Therefore, notice is hereby given that the Secretary of Agriculture designates said State under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act.

On and after March 31, 1991, the provisions of titles I and IV of the Federal Meat Inspection Act shall apply to intrastate operations and transactions in said State, and to persons, firms, and corporations and transactions in said State, and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce", within the meaning of the Federal Meat Inspection Act, and any establishment in the State which conducts any slaughtering or preparation of carcasses or parts or products thereof, as described above, must have Federal meat inspection or cease its operations, unless it qualifies for an exemption under sections 23(a) or 301(c)(2) of the Federal Meat Inspection Act.

Also, on and after March 31, 1991, the provisions of sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act shall apply to intrastate operations and transactions in said State and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce", within the meaning of the Poultry Products Inspection Act, and any establishment in the State which conducts any slaughter or processing or poultry products must have Federal inspection or cease its operations, unless it qualifies for an exemption under sections 15 or 5(c)(2) of the Poultry Products Inspection Act.

Therefore, the operator of each such establishment who desires to continue any such operations after March 30,

1991, should immediately communicate with the Regional Director for Inspection Operations as listed below, for information concerning the requirements and exemptions under the Acts and application for inspection and survey of the establishment: Dr. D. L. White, Director, Northeastern Regional Office, Inspection Operations, U.S. Department of Agriculture, 1421 Cherry Street, 7th Floor, Philadelphia, PA 19102 (215) 597-4217.

List of Subjects

9 CFR Part 331

Designated States, Meat inspection.

9 CFR Part 381

Designated States, Poultry and poultry products.

Accordingly, part 331 of the Federal meat inspection regulations (9 CFR part 331) is amended as follows:

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

§ 331.2 [Amended]

2. The table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is amended as follows:

In the "State" column, "Maryland" is added immediately below "Maine".

In the "Effective date of application of Federal provisions" column, "March 31, 1991," is added on the line with "Maryland".

Further, part 381 of the poultry products inspection regulations (9 CFR part 381) is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451-470, 7 CFR 2.17, 2.55.

§ 381.221 [Amended]

2. The table in § 381.221 of the poultry products inspection regulations (9 CFR 381.221) is amended as follows:

In the "State" column, "Maryland" is added immediately below "Maine".

In the "Effective date of application of Federal provisions" column, "March 31,

1991" is added on the line with "Maryland".

The Administrator, Food Safety and Inspection Service, has determined that it is necessary to designate the State of Maryland immediately, in accordance with section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the poultry products Inspection Act, in order to carry out the Secretary's responsibilities under the Acts.

Therefore, it does not appear that additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to the public interest.

Done at Washington, D.C., on: February 21, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-5002 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-DM-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621

RIN 3052-AB17

Miscellaneous Technical Changes; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621 on January 24, 1991 (56 FR 2671). The final regulations relate to (1) revisions necessary to reflect statutory changes made in 1986 and 1987 to the Farm Credit Act of 1971; (2) revisions that are technical and typographical corrections; and (3) revisions that reflect changes in the FCA internal organization. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the *Federal Register* during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 4, 1991.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT:

Patricia W. DiMuzio, Manager, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 27, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-5038 Filed 3-1-91; 8:45 am]

BILLING CODE 6705-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

Boards and Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1209 by revising subpart 1, "Board of Contract Appeals." This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601-613) and prescribes its authority, duties, and membership.

EFFECTIVE DATE: March 4, 1991.

ADDRESSES: Board of Contract Appeals, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carroll C. Dicus, Jr., Chairperson, 202-453-2890.

SUPPLEMENTARY INFORMATION: NASA published its final rule in the *Federal Register* on January 4, 1990 (45 FR 1006). This revision reflects the Administrator's determination to reestablish the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601-613, as amended by the Federal Courts Improvement Act of 1982 (Pub. L. 97-164), to conform the regulations with the amendments and to implement the provisions of the Contract Disputes Act, as amended, consistently with efficient administration.

Since this action involves administrative procedural matters, it has been determined that no public comment period is required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact in a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1209

Board of Contract Appeals, Organization and functions (Government agencies).

For reasons set out in the preamble, 14 CFR part 1209 is amended as follows:

PART 1209—BOARDS AND COMMITTEES

1. The authority citation for 14 CFR part 1209 continues to read as follows:

Authority: Sec. 203, 72 Stat. 429, 42 U.S.C. 2473.

2. 14 CFR part 1209 is amended by revising subpart 1 to read as follows:

Subpart 1—Board of Contract Appeals

Sec.

1209.100	Scope.
1209.101	Establishment.
1209.102	Authority and duties of the Board.
1209.103	Membership.
1209.104	Responsibilities of the Chairperson.

Subpart 1—Board of Contract Appeals

§ 1209.100 Scope.

This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601-613.

§ 1209.101 Establishment.

The NASA Board of Contract Appeals was established by NASA Management Instruction 2-4-1, June 25, 1959, and was subsequently continued in effect by NASA Management Instruction (NMI) 1152.1. The Board is continued in effect by this subpart.

§ 1209.102 Authority and duties of the Board.

(a) The Board, located at NASA Headquarters, Washington, DC, shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relating to a contract made by NASA and (2) relating to a contract made by any other agency when such agency or the Administrator for Federal Procurement Policy has designated the NASA Board to decide the appeal. In exercising this jurisdiction, the Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the United States Claims Court.

(b) The Board shall continue to act for and exercise the full authority of the Administrator in hearing and deciding all appeals in which, by the terms of a contract executed prior to March 1, 1979, the contractor may appeal to the Administrator from decisions of the contracting officer.

(c) There shall be no administrative appeal from decisions rendered by the Board. Either party to the dispute may appeal a decision of the Board under paragraph (a) of this section to the United States Court of Appeals for the Federal Circuit, as provided in section 10 of the Contract Disputes Act of 1978, 41 U.S.C. 609.

(d) The Board shall have all customary powers necessary for the performance of its duties including, but not limited to, the authority to issue rules of procedure, to conduct hearings, dismiss appeals or other proceedings, call witnesses, order the production of documents or other evidence, take official notice of facts within general knowledge, and decide all questions of fact or law raised by the appeal.

(e) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal.

(f) The member or members of the Board assigned to hear an appeal shall have authority to conduct prehearing conferences, hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument to a designated panel of the Board. A single member of a panel may be assigned to hear and decide motions which are not dispositive of the appeal.

(g) An appeal shall normally be adjudicated by a panel of two or more members. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal. In the event of a vacancy on the NASA Board of Contract Appeals, or if the third member of the Board shall be disqualified or disabled, the Chairperson may assign a third member from another federal board of contract appeals to consider the appeal.

§ 1209.103 Membership.

(a) The Board shall consist of at least three members appointed by the Administrator, one of whom shall be designated as Chairperson. A Vice Chairperson may also be designated from the appointed members. Members may perform other duties, not inconsistent with their primary duty, as assigned by the Administrator. The

Board is responsible directly to the Administrator.

(b) Members of the Board are hereby designated Administrative Judges.

(c) Members must be qualified in accordance with the provisions of section 8(b)(1) of the Contract Disputes Act of 1978, 41 U.S.C. 607(b)(1).

(d) No member of the Board shall consider an appeal if the member has participated in any aspect of the award or administration of a contract in dispute.

§ 1209.104 Responsibilities of the Chairperson.

The Chairperson of the Board of Contract Appeals shall be responsible for:

(a) The administration of the Board;

(b) The assignment of a member or members of the Board to act for the Board in each appeal and the assignment of the panel of Board members to decide each appeal;

(c) The receipt and custody of all papers and material relating to contract appeals; and

(d) The designation of an acting Chairperson during the Chairperson's absence, disqualification, or disability, who is empowered to exercise the powers of the Chairperson, provided a Vice Chairperson has not been formally designated;

(e) The submission of a report, not less often than annually, to the Administrator on the status of the Board's activities.

Dated: February 25, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-4981 Filed 3-1-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[T.D. 8324]

RIN 1545-A006

Reporting and Withholding on Employee Business Expense Reimbursements and Allowances; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8324), which were published Monday, December 17, 1990 (55 FR 51688). The regulations concern the taxation of and

reporting and withholding on payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement.

FOR FURTHER INFORMATION CONTACT: Richard Pavel (202) 377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, reflect changes to the law made by the Family Support Act of 1988. The final regulations will affect employees who receive payments and payors who make payments under reimbursement or other expense allowance arrangements.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8324), which were the subject of FR Doc. 90-29475, is corrected as follows:

Paragraph 1. On page 51689, column one, under the "EFFECTIVE DATES" heading in the preamble, line 20, the phrase "provisions of §§ 1.62-2(d)(3) and 1.62-", is corrected to read "provisions of §§ 1.62-(d)(3)(ii) and 1.62-".

§ 1.62-2 [Corrected]

Par. 2. On page 51695, column three, in § 1.62-2, paragraph (m), line 16, the phrase "Paragraphs (d)(3) and (h)(2)(i)(B) of this" is corrected to read "Paragraphs (d)(3)(ii) and (h)(2)(i)(B) of this".

PART 31—[CORRECTED]

Par. 3. On page 51696, column one, under "PART 31—[AMENDED]", the instructional par. 6. and the authority citation are corrected to read as follows:

"Par. 6. The authority citation for part 31 is revised to read as follows:

Authority: 26 U.S.C. 7805 * * * Secs. 31.3121(a)-3, 31.3231(e)-3, 31.3306(b)-2, and 31.3401(a)-4 also issued under 26 U.S.C. 62."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-4947 Filed 3-1-91; 8:45 am]

BILLING CODE 4830-01-M

[T.D. 8335]

26 CFR Part 602

RIN 1545-A088

OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Technical Amendments to § 602.101.

SUMMARY: This document contains technical amendments to § 602.101(c) which collects and displays the control numbers assigned to regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and the Paperwork Reduction Reauthorization Act of 1988, which require that agencies display control numbers assigned by that Office to regulations that solicit or obtain information from the public. By displaying these control numbers, these regulations provide necessary guidance to taxpayers subject to reporting or recordkeeping requirements. It is the intention of the Service to update, correct and clarify the display of control numbers due to omission, duplication, and/or of a typographical nature, etc., which might otherwise be misleading to those relying on this information.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dale Goode at 202-566-3935.

SUPPLEMENTARY INFORMATION:

Background

The Office of Management and Budget (OMB) issued 5 CFR part 1320—Controlling Paperwork Burdens on the Public—on March 31, 1983 (48 FR 13666). This rule implemented provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. chapter 35) concerning agency responsibilities for obtaining OMB approval of their collections of information and other paperwork control functions.

The Paperwork Reduction Reauthorization Act of 1986 (section 101(m) (title VIII, part A) of Public Law 99-500 (October 18, 1986) and 99-591 (October 30, 1986), 100 Stat. 1783-335, 3341-335) amended the Paperwork Reduction Act of 1980, effective October 30, 1986. As a result of these legislative amendments, OMB published a notice of proposed rulemaking on July 23, 1987 (52 FR 27768), and final rules on May 10, 1988 (53 FR 18618).

Section 602.101 is intended to comply with the requirements of §§ 1320.7(f), 1320.12, and 1320.15 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act and

amendments thereto by the Paperwork Reduction Reauthorization Act of 1986), for display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations.

Special Analyses

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

Drafting Information

The principal author of this regulation is Dale D. Goode of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, title 26, part 602 of the Code of Federal Regulations, is amended as follows:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 1. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Part 602 is amended by revising the table in § 602.101(c) to read as follows:

§ 602.101 OMB Control Numbers

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
1.1-1	1545-0067
1.23-5	1545-0074
1.25-1T	1545-0922
	1545-0930
1.25-2T	1545-0922
	1545-0930
1.25-3T	1545-0922
	1545-0930
1.25-4T	1545-0922
1.25-5T	1545-0922
1.25-6T	1545-0922
1.25-7T	1545-0922
1.25-8T	1545-0922

CFR part or section where identified and described	Current OMB control number
1.28-1	1545-0619
1.31-2	1545-0074
1.37-1	1545-0074
1.37-3	1545-0074
1.41-2	1545-0619
1.41-3	1545-0619
1.41-4A	1545-0074
1.41-4 (b) and (c)	1545-0074
1.41-9	1545-0619
1.42-1T	1545-0984
	1545-0988
1.42-2	1545-1005
1.43-2	1545-0074
1.44A-1	1545-0068
1.44A-3	1545-0074
1.44B-1	1545-0219
1.44C	1545-0214
1.44F-5	1545-0732
1.44F-6	1545-0732
1.46-1	1545-0123
	1545-0155
1.46-3	1545-0155
1.46-4	1545-0155
1.46-5	1545-0155
1.46-6	1545-0155
1.46-8	1545-0155
1.46-9	1545-0155
1.46-10	1545-0118
1.46-11	1545-0155
1.47-1	1545-0166
	1545-0155
1.47-3	1545-0166
	1545-0155
1.47-4	1545-0123
1.47-5	1545-0092
1.47-6	1545-0099
1.48-3	1545-0155
1.48-4	1545-0808
	1545-0155
1.48-5	1545-0155
1.48-6	1545-0155
1.48-7	1545-0808
1.48-8	1545-0155
1.48-12	1545-0155
1.50A-1	1545-0895
1.50A-2	1545-0895
1.50A-3	1545-0895
1.50A-4	1545-0895
1.50A-5	1545-0895
1.50A-6	1545-0895
1.50A-7	1545-0895
1.50B-1	1545-0895
1.50B-2	1545-0895
1.50B-3	1545-0895
1.50B-4	1545-0895
1.50B-5	1545-0895
1.51-1	1545-0219
	1545-0241
	1545-0244
	1545-0797
1.52-2	1545-0219
1.52-3	1545-0219
1.52-4	1545-0074
1.58-1	1545-0123
1.56A-1	1545-0227
1.56A-2	1545-0227
1.56A-3	1545-0227
1.56A-4	1545-0227
1.56A-5	1545-0227
1.57-5	1545-0227
1.58-1	1545-0175
1.58-9T	1545-1093
1.61-2	1545-0771
1.61-2T	1545-0771
1.61-4	1545-0187
1.61-15	1545-0074
1.62-1	1545-0139
1.62-2	1545-1148
1.63-1	1545-0074

CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number
1.64	1545-0074	1.162-14	1545-0139	1.177-1	1545-0172
1.67-2T	1545-0110	1.162-15	1545-0139	1.179-2	1545-0172
1.67-3T	1545-0118	1.162-16	1545-0139	1.179-4	1545-0172
1.71-1T	1545-0074	1.162-17	1545-0139	1.180-2	1545-0074
1.72-4	1545-0074	1.162-18	1545-0139	1.182-6	1545-0074
1.72-6	1545-0074	1.162-19	1545-0139	1.183-1	1545-0195
1.72-9	1545-0074	1.162-20	1545-0139	1.183-2	1545-0195
1.72-17	1545-0074	1.162-24	1545-0074	1.183-3	1545-0195
1.72-17A	1545-0074	1.163-5	1545-0786	1.183-4	1545-0195
1.72-18	1545-0074		1545-1132	1.185-3	1545-0152
1.74-1	1545-1100	1.163-8T	1545-0995		1545-0172
1.79-2	1545-0074	1.163-10T	1545-0074	1.190-3	1545-0074
1.79-3	1545-0074	1.165-1	1545-0177	1.194-2	1545-0735
1.83-2	1545-0074	1.165-2	1545-0177	1.194-4	1545-0735
1.83-5	1545-0074	1.165-3	1545-0177	1.213-1	1545-0074
1.103-10	1545-0123	1.165-4	1545-0177	1.215-1T	1545-0074
	1545-0940	1.165-5	1545-0177	1.216-1(d)(2)	1545-1041
1.103-15AT	1545-0720	1.165-6	1545-0177	1.217	1545-0062
1.103(n)-2T	1545-0874	1.165-7	1545-0177	1.217-2	1545-0182
1.103(n)-4T	1545-0874	1.165-8	1545-0177	1.243-3	1545-0123
1.103A-2	1545-0720	1.165-9	1545-0177	1.243-4	1545-0123
1.105-4	1545-0074	1.165-10	1545-0177	1.243-5	1545-0123
1.105-5	1545-0074	1.165-11	1545-0074	1.248-1	1545-0172
1.105-6	1545-0074		1545-0177	1.250-1	1545-0132
1.105-7	1545-0074		1545-0786	1.254-1	1545-0074
1.105-8	1545-0074	1.165-12	1545-0786	1.261-1	1545-1041
1.105-9	1545-0074	1.166-1	1545-0123	1.263(e)-1	1545-0123
1.105-10	1545-0074	1.166-4	1545-0123	1.263A-1T	1545-0187
1.108(a)-1	1545-0046	1.167(a)-5T	1545-1021		1545-0987
1.108(a)-2	1545-0046	1.166-10	1545-0123	1.265-1	1545-0074
1.117-5	1545-0869	1.167(a)-7	1545-0172	1.265-2	1545-0123
1.117-6	1545-0008	1.167(a)-11	1545-0152	1.266-1	1545-0123
1.119-1	1545-0067		1545-0172	1.267-1T	1545-0885
1.120-3	1545-0057	1.167(a)-12	1545-0172	1.267(f)-1T	1545-0885
1.121-1	1545-0072	1.167(d)-1	1545-0172	1.268-1	1545-0164
1.121-2	1545-0072	1.167(e)-1	1545-0172	1.274-1	1545-0139
1.121-3	1545-0072	1.167(e)-2	1545-0172	1.274-2	1545-0139
1.121-4	1545-0072	1.167(f)-11	1545-0172	1.274-3	1545-0139
	1545-0091	1.167(j)-3	1545-0172	1.274-4	1545-0139
1.121-5	1545-0072	1.167(k)-3	1545-0074	1.274-5	1545-0139
1.127-2	1545-0768	1.167(k)-4	1545-0074		1545-0771
1.131-1	1545-0914	1.167(l)-1	1545-0172	1.274-5T	1545-0074
1.132-1T	1545-0771	1.168(d)-4	1545-1146		1545-0172
1.132-2	1545-0771	1.168(f)(B)-1T	1545-0923		1545-0771
1.132-2T	1545-0771	1.168(h)-2	1545-0923	1.274-6	1545-0139
1.132-5	1545-0771	1.168-1	1545-0172		1545-0771
1.132-5T	1545-0771	1.168-2	1545-0172	1.274-6T	1545-0074
1.143(a)(5)	1545-0720	1.168-3	1545-0172		1545-0771
1.148-0T	1545-1098	1.168-4	1545-0172	1.274-7	1545-0139
1.148-1T	1545-0720	1.168-5	1545-0172	1.274-8	1545-0139
	1545-1098	1.168-6	1545-0172	1.279-6	1545-0123
1.148-2T	1545-0720	1.169-4	1545-0172	1.280A-3	1545-0074
1.148-3T	1545-0720	1.170-1	1545-0074	1.280C-4	1545-1155
	1545-1098	1.170-2	1545-0074	1.280F-3T	1545-0074
1.148-4T	1545-0720	1.170-3	1545-0123	1.281-4	1545-0123
1.148-5T	1545-0720	1.170A-1	1545-0074	1.302-4	1545-0074
1.148-6T	1545-0720	1.170A-2	1545-0074	1.305-3	1545-0123
1.148-7T	1545-0720	1.170A-4(A)(b)	1545-0123	1.307-2	1545-0074
1.148-8T	1545-0720	1.170A-8	1545-0074	1.312-15	1545-0172
	1545-1098	1.170A-9	1545-0052	1.316-1	1545-0123
1.149(e)-1T	1545-0720		1545-0074	1.331-1	1545-0074
1.149-1	1545-0945	1.170A-11	1545-0123	1.332-4	1545-0123
1.151-1	1545-0074		1545-0074	1.332-6	1545-0123
1.152-3	1545-0071	1.170A-12	1545-0020	1.333-3	1545-0123
1.152-4	1545-0074		1545-0074	1.333-6	1545-0123
1.152-4T	1545-0074	1.170A-13	1545-0074	1.337-1T	1545-0702
1.162-1	1545-0139		1545-0754	1.337-5	1545-0123
1.162-2	1545-0139	1.170A-13T	1545-0908	1.337-6	1545-0123
1.162-3	1545-0139	1.170A-14	1545-0763	1.337(d)-1	1545-1160
1.162-4	1545-0139	1.171-3	1545-0172	1.338-1T	1545-0702
1.162-5	1545-0139	1.172-1	1545-0172		1545-1115
1.162-6	1545-0139	1.172-11	1545-0074	1.338-2T	1545-0702
1.162-7	1545-0139	1.172-13	1545-0863		1545-1115
1.162-8	1545-0139	1.173-1	1545-0172	1.338-3T	1545-0702
1.162-9	1545-0139	1.174-3	1545-0152	1.338-4T	1545-1115
1.162-10	1545-0139	1.174-4	1545-0152	1.338-5T	1545-0702
1.162-11	1545-0139	1.175-3	1545-0187	1.338-6T	1545-1115
1.162-12	1545-0139	1.175-6	1545-0152	1.338(b)-4T	1545-0702
1.162-13	1545-0139				

CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number
1.338(h)-1T	1545-0702	1.412(c)(1)-2	1545-0710	1.471-2	1545-0123
1.338(h)(10)-1T	1545-0702	1.412(c)(2)-1	1545-0710	1.471-5	1545-0123
1.341-7	1545-0123	1.412(c)(3)-2	1545-0710	1.471-6	1545-0123
1.351-3	1545-0074	1.414(c)-5	1545-0797	1.471-8	1545-0123
1.355-5	1545-0123	1.415-2	1545-0710	1.471-11	1545-0123
1.358-5	1545-0123	1.415-6	1545-0710		1545-0152
1.362-2	1545-0123	1.441-1	1545-0123	1.472-1	1545-0042
1.367(a)-1T	1545-0026	1.441-2	1545-0123		1545-0152
1.367(a)-2T	1545-0026	1.441-3T	1545-0134	1.472-2	1545-0152
1.367(a)-3T	1545-0026	1.442-1	1545-0074	1.472-3	1545-0042
1.367(a)-6T	1545-0026		1545-0123	1.472-5	1545-0152
1.367(d)-1T	1545-0026		1545-0134	1.472-6	1545-0028
1.367(e)-1T	1545-1124		1545-0152		1545-0042
1.367(e)-2T	1545-1124	1.442-2T	1545-0134	1.481-4	1545-0152
1.368-3	1545-0123	1.442-3T	1545-0134	1.481-5	1545-0152
1.370-2	1545-0074	1.443-1	1545-0123	1.482-2	1545-0123
1.371-1	1545-0123	1.444-3T	1545-1036	1.485-1	1545-0152
1.371-2	1545-0123	1.445-6	1545-0123	1.501(a)-1	1545-0056
1.374-3	1545-0123	1.446	1545-0736		1545-0057
1.381-2	1545-0123	1.446-1	1545-0074	1.501(c)(3)-1	1545-0056
1.381(b)-1	1545-0123		1545-0152	1.501(c)(9)-5	1545-0047
1.381(c)(4)-1	1545-0123	1.448-1	1545-0152	1.501(c)(17)-3	1545-0047
	1545-0152	1.448-1T	1545-0152	1.501(e)-1	1545-0814
	1545-0879		1545-1147	1.503(c)-1	1545-0047
1.381(c)(5)-1	1545-0123	1.448-2	1545-0152		1545-0052
	1545-0152	1.448-2T	1545-0152	1.505(c)-1T	1545-0916
1.381(c)(6)-1	1545-0123	1.451	1545-0736	1.507-1	1545-0052
	1545-0152	1.451-1	1545-0091	1.507-2	1545-0052
1.381(c)(8)-1	1545-0123	1.451-3	1545-0152	1.508-1	1545-0052
1.381(c)(10)-1	1545-0123		1545-0736		1545-0056
1.381(c)(11)-1(k)	1545-0123	1.451-4	1545-0123	1.509(a)-3	1545-0047
1.381(c)(13)-1	1545-0123	1.451-5	1545-0074	1.509(a)-5	1545-0047
1.381(c)(17)-1	1545-0045	1.451-6	1545-0074	1.509(c)-1	1545-0052
1.381(c)(25)-1	1545-0045	1.451-7	1545-0074	1.512(a)-1	1545-0687
1.382-1T	1545-0123	1.453-1	1545-0152	1.512(a)-4	1545-0047
1.382-2	1545-0123	1.453-2	1545-0152		1545-0687
1.382-2T	1545-0123	1.453-8	1545-0152	1.521-1	1545-0051
	1545-1120		1545-0228		1545-0058
1.383-1	1545-0074	1.453-10	1545-0152	1.527-2	1545-0129
1.401(a)-11	1545-0710	1.453A-1	1545-0152	1.527-5	1545-0129
1.401(a)-11T	1545-0928		1545-1134	1.527-8	1545-0129
1.401(a)-20	1545-0928	1.453A-2	1545-0152	1.527-9	1545-0129
1.401(a)-50	1545-0710		1545-1134	1.528-8	1545-0127
1.401(b)-1	1545-0197	1.453A-3	1545-0963	1.533-2	1545-0123
1.401(f)-1	1545-0710	1.454-1	1545-0074	1.534-2	1545-0123
1.401(k)-1	1545-1039	1.455-2	1545-0152	1.542-3	1545-0123
	1545-1069	1.455-8	1545-0123	1.545-2	1545-0123
1.401(m)-1	1545-1039	1.456-2	1545-0123	1.545-3	1545-0123
1.401-1	1545-0020	1.456-6	1545-0123	1.547-2	1545-0045
	1545-0197	1.456-7	1545-0123		1545-0123
	1545-0200	1.458-1	1545-0879	1.547-3	1545-0123
	1545-0534	1.458-10	1545-0152	1.551-4	1545-0074
	1545-0710	1.460-6	1545-1031	1.552-3	1545-0099
1.401-12(n)	1545-0806	1.461-1	1545-0074	1.552-4	1545-0099
1.401-14	1545-0710	1.461-2	1545-0096	1.552-5	1545-0099
1.402(e)(2)	1545-0193	1.461-3	1545-0096	1.556-2	1545-0704
1.402(e)(3)	1545-0193	1.461-3T	1545-0152	1.561-1	1545-0044
1.402(e)(14)	1545-0193		1545-0917	1.561-2	1545-0123
1.402(e)-12	1545-0119	1.461-4	1545-0096	1.562-3	1545-0123
1.402(e)-13	1545-0119	1.463-1T	1545-0916	1.563-2	1545-0123
1.402(e)-14	1545-0119	1.465-1T thru 95	1545-0712	1.564-1	1545-0123
1.402(f)-1	1545-0928	1.466-3	1545-0152	1.565-1	1545-0043
1.402(f)-1T	1545-0928	1.466-4	1545-0152		1545-0123
1.403(b)-1	1545-0710	1.468A-3	1545-0954	1.585-2	1545-0043
1.403(b)-2	1545-0996	1.468A-3T	1545-0954	1.585-3	1545-0043
1.403-1(h)	1545-0710	1.468A-4	1545-0954	1.565-5	1545-0043
1.404(a)-4	1545-0710	1.468A-4T	1545-0954	1.565-8	1545-0043
1.404(a)-12	1545-0710	1.468A-6T	1545-0954	1.565-1T	1545-0043
1.404A-2	1545-0123	1.468A-7	1545-0954	1.565-2T	1545-0043
1.404A-6	1545-0123	1.468A-7T	1545-0954	1.565-3T	1545-0043
1.408-2	1545-0390	1.468A-8	1545-0954	1.565-5T	1545-0043
1.408-5	1545-0747	1.468A-8T	1545-0954	1.585-6T	1545-0043
1.408-5	1545-0203	1.469-1T	1545-1008	1.585-1	1545-0123
	1545-0390	1.469-2	1545-0985	1.585-3	1545-0123
1.408-7	1545-0119	1.469-2T	1545-0712	1.586-2	1545-0123
1.408-8	1545-0203		1545-1091	1.593-1	1545-0123
1.410(a)-2	1545-0710	1.469-4T	1545-0985	1.593-6	1545-0123
1.410(d)-1	1545-0710		1545-1037	1.593-6A	1545-0123
1.412(b)-5	1545-0710	1.471	1545-0736	1.593-7	1545-0123

CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number
1.595-1	1545-0123	1.820-2	1545-0128	1.882-4	1545-0126
1.611-2	1545-0099	1.821-1	1545-1027	1.884-0T	1545-1070
1.611-3	1545-0007	1.821-3	1545-1027	1.884-1T	1545-1070
1.612-4	1545-0074	1.821-4	1545-1027	1.884-2T	1545-0126
1.612-5	1545-0099	1.822-5	1545-1027		1545-1070
1.613-3	1545-0099	1.822-6	1545-1027	1.884-5T	1545-1070
1.613-4	1545-0099	1.822-8	1545-1027	1.892-1	1545-0126
1.613-6	1545-0099	1.822-9	1545-1027	1.892-1T	1545-1053
1.613-7	1545-0099	1.823-2	1545-1027	1.892-2T	1545-1053
1.613A-3	1545-0919	1.823-5	1545-1027	1.892-3T	1545-1053
1.613A-5	1545-0099	1.823-6	1545-1027	1.892-4T	1545-1053
1.613A-6	1545-0099	1.824-1	1545-1027	1.892-5T	1545-1053
1.614-2	1545-0099	1.824-3	1545-1027	1.892-6T	1545-1053
1.614-3	1545-0099	1.825-1	1545-1027	1.892-7T	1545-1053
1.614-5	1545-0099	1.826-1	1545-1027	1.897-2	1545-0123
1.614-6	1545-0099	1.826-2	1545-1027		1545-0902
1.614-8	1545-0099	1.826-3	1545-1027	1.897-3	1545-0123
1.617-1	1545-0099	1.826-4	1545-1027	1.897-4	1545-0123
1.617-3	1545-0099	1.826-6	1545-1027	1.897-5T	1545-0902
1.617-4	1545-0099	1.831-3	1545-0123	1.897-6T	1545-0902
1.631-1	1545-0007	1.831-4	1545-0123	1.901-2	1545-0746
1.631-2	1545-0007	1.832-5	1545-0123	1.901-2A	1545-0746
1.641(b)-2	1545-0092	1.845-7	1545-0123	1.901-3	1545-0122
1.642(c)-1	1545-0092	1.851-2	1545-1010	1.902-1	1545-0122
1.642(c)-2	1545-0092	1.851-4	1545-0123	1.904-1	1545-0121
1.642(c)-5	1545-0074	1.852-1	1545-0123		1545-0122
1.642(c)-6	1545-0020	1.852-4	1545-0123	1.904-2	1545-0121
	1545-0074		1545-0145		1545-0122
	1545-0092	1.852-6	1545-0123	1.904-3	1545-0121
1.642(e)-2	1545-0092		1545-0144	1.904-4	1545-0121
1.642(g)-1	1545-0092	1.852-7	1545-0074	1.904-5	1545-0121
1.642(i)-1	1545-0092	1.852-9	1545-0074	1.904(f)-1	1545-0121
1.661-1	1545-0123		1545-0123		1545-0122
1.663(b)-2	1545-0092		1545-0144	1.904(f)-2	1545-0121
1.664-1	1545-0196		1545-0145	1.904(f)-3	1545-0121
1.664-2	1545-0196	1.852-11	1545-1094	1.904(f)-4	1545-0121
1.664-3	1545-0196	1.853-3	1545-0123	1.904(f)-5	1545-0121
1.664-4	1545-0020	1.853-4	1545-0123	1.904(f)-6	1545-0121
	1545-0196	1.854-2	1545-0123	1.904(f)-7	1545-1127
1.665(a)-0A through		1.854-4	1545-0123	1.904(f)-8	1545-1127
1.665(g)-2A	1545-0192	1.854-4	1545-0123	1.904(f)-9	1545-1127
1.666(d)-1A	1545-0092	1.855-1	1545-0123	1.904(f)-10	1545-1127
1.671-4	1545-0092	1.856-2	1545-0123		1545-1127
1.701-1	1545-0099	1.856-6	1545-0123	1.905-2	1545-0122
1.702-1	1545-0074	1.856-7	1545-0123	1.905-3	1545-0122
1.703-1	1545-0099	1.856-8	1545-0123	1.905-3T	1545-1056
1.704-1T	1545-1090	1.856-8	1545-0123	1.905-4	1545-0122
1.706-1	1545-0099	1.857-8	1545-0123	1.905-4T	1545-1056
	1545-0074	1.857-9	1545-0074	1.905-5T	1545-1056
	1545-0134	1.858-1	1545-0123	1.911-1	1545-0067
1.708-1T	1545-0099	1.858-2	1545-0045		1545-0070
1.708-1	1545-0099		1545-0123	1.911-2	1545-0067
1.732-1	1545-0099	1.859-4	1545-0123		1545-0070
1.736-1	1545-0074	1.860-2	1545-0045	1.911-3	1545-0067
1.743-1	1545-0074	1.860-4	1545-0045		1545-0070
1.751-1	1545-0074	1.860D-1	1545-1018	1.911-4	1545-0067
	1545-0099	1.860D-1T	1545-0118		1545-0070
	1545-0941	1.860F-4	1545-1018	1.911-5	1545-0067
1.752-4T	1545-1090	1.860F-4T	1545-0118		1545-0070
1.754-1	1545-0099		1545-1054	1.911-6	1545-0067
1.755-1	1545-0099		1545-1057		1545-0070
1.755-2T	1545-1021	1.861-2	1545-0089	1.911-7	1545-0067
1.761-2	1545-0099	1.861-3	1545-0089		1545-0070
1.801-1	1545-0123	1.861-8	1545-0126	1.913-1	1545-0067
	1545-0128	1.861-9	1545-0126	1.913-2	1545-0067
1.801-3	1545-0123	1.861-9T	1545-0121	1.913-3	1545-0067
1.801-5	1545-0128		1545-1072	1.913-4	1545-0067
1.801-8	1545-0128	1.861-12	1545-1072	1.913-5	1545-0067
1.804-4	1545-0128	1.863-3	1545-0126	1.913-6	1545-0067
1.811-2	1545-0128	1.863-4	1545-0126	1.913-7	1545-0067
1.811-8	1545-0126	1.863-7	1545-0132	1.913-8	1545-0067
1.812-2	1545-0128	1.864-4	1545-0126	1.913-9	1545-0067
1.815-6	1545-0128	1.871-1	1545-0096	1.913-10	1545-0067
1.818-4	1545-0128	1.871-6	1545-0795	1.913-11	1545-0067
1.818-5	1545-0128	1.871-7	1545-0089	1.913-12	1545-0067
1.818-8	1545-0128	1.871-10	1545-0089	1.913-13	1545-0067
1.819-2	1545-0128		1545-0165		
1.820	1545-0128	1.874-1	1545-0089		

CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number
1.921-1T	1545-0190	1.992-2	1545-0190	1.1250-1	1545-0184
	1545-0884		1545-0884	1.1250-2	1545-0184
	1545-0935		1545-0938	1.1250-3	1545-0184
	1545-0939	1.992-3	1545-0190	1.1250-4	1545-0184
1.921-2	1545-0884		1545-0938	1.1250-5	1545-0184
1.921-2T	1545-0884	1.992-4	1545-0190	1.1251-1	1545-0184
1.921-3T	1545-0935		1545-0938	1.1251-2	1545-0074
1.922-1	1545-0884	1.993-3	1545-0938		1545-0184
1.922-1T	1545-0884	1.993-4	1545-0938	1.1251-3	1545-0184
1.923-1T	1545-0935	1.994-1	1545-0938	1.1251-4	1545-0184
1.924	1545-0904	1.995-5	1545-0938	1.1252-1	1545-0184
1.924(a)-1T	1545-0935	1.995(f)-1	1545-0939	1.1252-2	1545-0184
1.924(d)-1T	1545-0904	1.1012-1	1545-0074	1.1254-1	1545-0074
1.925(a)-1T	1545-0935		1545-1139		1545-0184
1.925(b)-1T	1545-0935	1.1014-4	1545-0184	1.1254-2	1545-0184
1.926(a)-1T	1545-0935	1.1015-1	1545-0020	1.1254-3	1545-0074
1.927(a)-1T	1545-0935	1.1017-2	1545-0028		1545-0184
1.927(b)-1T	1545-0935		1545-0046	1.1254-4	1545-0184
1.927(d)-1	1545-0884	1.1031(d)-1T	1545-1021	1.1254-5	1545-0184
1.927(d)-2T	1545-0935	1.1033(a)-2	1545-0184	1.1256(h)-1T	1545-0644
1.927(e)-1T	1545-0935	1.1033(g)-1	1545-0184	1.1256(h)-2T	1545-0644
1.927(e)-2T	1545-0935	1.1034-1	1545-0072	1.1256(h)-3T	1545-0644
1.927(f)-1	1545-0884	1.1039-1	1545-0184	1.1271-3	1545-0887
1.927(f)-1T	1545-0884	1.1041-1T	1545-0074	1.1274-1	1545-0887
1.927(f)-3	1545-0884	1.1042-1T	1545-0916	1.1274-2	1545-0887
1.931-1	1545-0074	1.1058-1	1545-0770	1.1274-3	1545-0887
	1545-0123	1.1060-1T	1545-1021	1.1274-3T	1545-0887
1.934-1	1545-0782	1.1071-1	1545-0184	1.1274-4	1545-0887
1.935-1	1545-0074	1.1071-4	1545-0184	1.1274-5	1545-0887
	1545-0087	1.1081-4	1545-0028	1.1274-6	1545-0887
	1545-0803		1545-0046	1.1274A-1	1545-0887
1.936-1	1545-0215	1.1081-11	1545-0123	1.1275-2	1545-0887
	1545-0217		1545-0074	1.1275-3	1545-0887
	1545-0217		1545-0123		1545-1018
1.936-4	1545-0215	1.1082-1	1545-0046	1.1275-3T	1545-0887
1.936-5	1545-0704	1.1082-2	1545-0046	1.1279-6	1545-0123
1.936-6	1545-0215	1.1082-3	1545-0046	1.1287-1	1545-0786
1.936-7	1545-0215		1545-0184	1.1287-1T	1545-0786
1.936-10T	1545-1138	1.1082-4	1545-0046	1.1291-0T	1545-1028
1.952-2	1545-0126	1.1082-5	1545-0046	1.1291-10T	1545-1028
1.952-7T	1545-1142	1.1082-6	1545-0046	1.1294-1T	1545-1002
1.953-2	1545-0126	1.1083-1	1545-0123		1545-1028
1.953-2T	1545-1142	1.1092(b)-1T	1545-0644	1.1295-1T	1545-1028
1.953-4T	1545-1142	1.1092(b)-2T	1545-0644	1.1297-3T	1545-1028
1.953-5T	1545-1142	1.1092(b)-3T	1545-0644	1.1304-1	1545-0074
1.953-6T	1545-1142	1.1092(b)-4T	1545-0644	1.1304-3	1545-0074
1.954-1	1545-0123	1.1092(b)-5T	1545-0644	1.1304-5	1545-0074
	1545-0755	1.1101-4	1545-0074	1.1311(a)-1	1545-0074
1.954-1T	1545-1068	1.1102-2	1545-0123	1.1361-1A	1545-0731
1.954-2T	1545-1068	1.1205-1	1545-0184	1.1362-3	1545-0146
1.955-2	1545-0123	1.1205-2	1545-0184	1.1362-4	1545-0146
1.955-3	1545-0123	1.1205-3	1545-0184	1.1362-5	1545-0146
1.955A-2	1545-0755	1.1205-4	1545-0184	1.1362-6	1545-0146
1.955A-3	1545-0755	1.1205-5	1545-0184	1.1362-7	1545-0146
1.956-1	1545-0704	1.1211-1	1545-0074	1.1368-1	1545-1139
1.956-2	1545-0704	1.1212-1	1545-0074	1.1368-2	1545-1139
1.959-1	1545-0704	1.1221-4	1545-0096	1.1372-2	1545-0146
1.959-2	1545-0704	1.1231-1	1545-0177	1.1372-3	1545-0146
1.960-1	1545-0122		1545-0184	1.1372-4	1545-0146
1.962-2	1545-0704	1.1231-2	1545-0177	1.1373-1	1545-0130
1.962-3	1545-0704	1.1232-3	1545-0184	1.1374-1	1545-0130
1.962-4	1545-0704	1.1237-1	1545-0074	1.1374-1A	1545-0130
1.964-1	1545-0126	1.1239-1	1545-0074	1.1375-1	1545-0130
	1545-0704	1.1242-1	1545-0184	1.1375-4	1545-0130
	1545-1072	1.1243-1	1545-0123	1.1375-6	1545-0130
1.964-3	1545-0126	1.1244(e)-1	1545-0123	1.1383-1	1545-0074
1.970-2	1545-0126	1.1245-1	1545-0184	1.1385-1	1545-0074
1.985-2	1545-1051	1.1245-2	1545-0184		1545-0098
1.985-2T	1545-1051	1.1245-3	1545-0184	1.1388-1	1545-0118
1.988-1T	1545-1053	1.1245-4	1545-0184		1545-0123
	1545-1131	1.1245-5	1545-0184	1.1402(a)-2	1545-0074
1.988-2T	1545-1053	1.1245-6	1545-0184	1.1402(a)-5	1545-0074
1.988-3T	1545-1053	1.1247-1	1545-0122	1.1402(a)-11	1545-0074
	1545-1131	1.1247-2	1545-0122	1.1402(a)-15	1545-0074
1.988-4T	1545-1053	1.1247-4	1545-0122	1.1402(a)-16	1545-0074
1.988-5T	1545-1053	1.1247-5	1545-0122	1.1402(b)-1	1545-0171
	1545-1131	1.1248-7	1545-0074	1.1402(c)-2	1545-0074
1.992-1	1545-0190			1.1402(e)	1545-0168
	1545-0938			1.1402(e)(1)-1	1545-0074

CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number
1.1402(e)(2)-1	1545-0074	1.1502-33	1545-0123	1.6013-7	1545-0074
1.1402(e)-1A	1545-0168	1.1502-33T	1545-1046	1.6015(a)-1	1545-0087
1.1402(e)-2A	1545-0168	1.1502-47	1545-0123	1.6015(b)-1	1545-0087
1.1402(e)-3A	1545-0168	1.1502-75	1545-0025	1.6015(d)-1	1545-0087
1.1402(e)-4A	1545-0168		1545-0123	1.6015(e)-1	1545-0087
1.1402(e)-5A	1545-0168		1545-0133	1.6015(f)-1	1545-0087
1.1402(e)-5T	1545-0168		1545-0152	1.6015(g)-1	1545-0087
1.1402(f)-1	1545-0074	1.1502-76	1545-0123	1.6015(h)-1	1545-0087
1.1402(h)-1	1545-0084		1545-0135	1.6015(i)-1	1545-0087
1.1441-2	1545-0795	1.1502-77	1545-0123	1.6017-1	1545-0074
1.1442-4	1545-0096	1.1502-77T	1545-1046		1545-0087
1.1441-3	1545-0089	1.1502-78	1545-0582		1545-0090
	1545-0096	1.1503-2T	1545-1083	1.6031(b)-1T	1545-0099
	1545-0795	1.1552-1	1545-0123	1.6031(c)-1T	1545-0099
1.1441-4	1545-0096	1.1561-3	1545-0123	1.6031-1	1545-0099
	1545-0165	1.1561-3A	1545-0123		1545-0970
	1545-0795	1.1563-1	1545-0123	1.6032-1	1545-0099
1.1441-5	1545-0096		1545-0797	1.6033-2	1545-0047
	1545-0795	1.1563-3	1545-0123		1545-0049
1.1441-6	1545-0055	1.4441-3	1545-0089		1545-0052
	1545-0795	1.6001-1	1545-0058		1545-0092
	1545-0795		1545-0074		1545-0687
1.1441-7	1545-0795		1545-0099		1545-1150
1.1441-8T	1545-1053		1545-0123	1.6033-3	1545-0052
1.1442-4	1545-0096		1545-0865	1.6034-1	1545-0092
1.1443-1	1545-0096		1545-0055		1545-0094
1.1445-1	1545-0902	1.6011-1	1545-0074	1.6035-1	1545-0704
1.1445-2	1545-0902		1545-0085	1.6035-2	1545-0704
	1545-1060		1545-0089	1.6035-3	1545-0704
1.1445-3	1545-0902		1545-0090	1.6037-1	1545-0130
	1545-1060		1545-0091		1545-1023
1.1445-4	1545-0902		1545-0096	1.6038-2	1545-0704
1.1445-5	1545-0902		1545-0121		1545-0805
1.1445-6	1545-0902		1545-0458	1.6038A-1	1545-0805
	1545-1060		1545-0666	1.6038B-1T	1545-0026
1.1445-7	1545-0902		1545-0675	1.6039-2	1545-0820
1.1445-8	1545-0096		1545-0908	1.6041	1545-0008
1.1445-1T	1545-0902		1545-0055	1.6041-1	1545-0008
1.1445-2T	1545-0902	1.6011-2	1545-0938		1545-0108
1.1445-3T	1545-0902		1545-0238		1545-0112
1.1445-4T	1545-0902	1.6011-3	1545-0238		1545-0115
1.1445-5T	1545-0902		1545-0239		1545-0120
1.1445-6T	1545-0902	1.6012(a)(7)	1545-0092		1545-0295
1.1445-7T	1545-0902	1.6012-0	1545-0067		1545-0350
1.1445-9T	1545-0902	1.6012-1	1545-0074		1545-0367
1.1445-10T	1545-0902		1545-0085		1545-0387
1.1451-1	1545-0054		1545-0089		1545-0441
1.1451-2	1545-0054		1545-0675		1545-0957
1.1461-1	1545-0054	1.6012-2	1545-0047	1.6041-2	1545-0008
	1545-0055		1545-0051		1545-0119
	1545-0795		1545-0067		1545-0119
1.1461-2	1545-0054		1545-0123		1545-0350
	1545-0055		1545-0126		1545-0441
	1545-0096		1545-0130	1.6041-3	1545-1148
	1545-0795		1545-0128	1.6041-4	1545-0115
1.1461-3	1545-0054		1545-0175		1545-0295
	1545-0055		1545-0687		1545-0367
	1545-0096		1545-0890		1545-0367
	1545-0795		1545-1023		1545-0957
1.1461-4	1545-0054		1545-1027	1.6041-5	1545-0295
	1545-0055	1.6012-3	1545-0047		1545-0367
	1545-0096		1545-0067		1545-0387
1.1462-1	1545-0795		1545-0092		1545-0957
1.1465-1	1545-0795		1545-0196	1.6041-6	1545-0008
1.1492-1	1545-0026		1545-0687		1545-0115
1.1494-1	1545-0026	1.6012-4	1545-0067		1545-0112
1.1502-5	1545-0257	1.6012-5	1545-0067	1.6041-7	1545-0295
1.1502-9	1545-0121		1545-0967		1545-0295
1.1502-13	1545-0123		1545-0970		1545-0350
	1545-0885		1545-0991		1545-0367
	1545-1161		1545-0936		1545-0387
1.1502-13T	1545-1161		1545-1023		1545-0441
1.1502-14	1545-0123		1545-1033		1545-0957
1.1502-14T	1545-1161		1545-1079	1.6041A-1	1545-0115
1.1502-16	1545-0123		1545-1079	1.6042-1	1545-0110
1.1502-18	1545-0123	1.6012-6	1545-0067	1.6042-2	1545-0295
1.1502-19	1545-0123		1545-0089		1545-0367
1.1502-20T	1545-1160		1545-0129		1545-0387
1.1502-31T	1545-1046	1.6013-1	1545-0074		1545-0957
1.1502-32	1545-0123	1.6013-2	1545-0091		
1.1502-32T	1545-1021	1.6013-6	1545-0074		

CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number	CFR part or section where identified and described	Current OMB control number
7.999-1	1545-0216	20.6081-1	1545-0015	31.3402(f)(2)-1	1545-0010
7.6039A-1	1545-0015		1545-0181		1545-0410
7.6041-1	1545-0115	20.6091-1	1545-0015	31.3402(f)(3)-1	1545-0010
7a.1	1545-0046	20.6161-1	1545-0015	31.3402(f)(4)-1	1545-0010
7a.2	1545-0046		1545-0181	31.3402(f)(4)-2	1545-0010
7a.3	1545-0046	20.6161-2	1545-0015	31.3402(f)(5)-1	1545-0010
10.2	1545-0152		1545-0181	31.3402(h)-1	1545-0010
11.401	1545-0197	20.6163-1	1545-0015	31.3402(h)(1)-1	1545-0029
11.402	1545-0193	20.6166-1	1545-0181	31.3402(h)(3)-1	1545-0010
11.410-1	1545-0710	20.6166A-1	1545-0015	31.3402(h)(3)-1	1545-0029
11.412(c)-7	1545-0710	20.6166A-3	1545-0015	31.3402(h)(4)-1	1545-0010
11.412(c)-11	1545-0710	20.6324A-1	1545-0754	31.3402(i)-1	1545-0010
12.7	1545-0190	22.0	1545-0015	31.3402(i)-(2)	1545-0010
12.8	1545-0191	25.2511-2	1545-0020	31.3402(k)-1	1545-0065
12.9	1545-0195	25.2512-2	1545-0020	31.3402(l)-1	1545-0010
13.16-1	1545-0123	25.2512-3	1545-0020	31.3402(m)-(1)	1545-0010
14a.422A-1	1545-0123	25.2512-5	1545-0020	31.3402(n)-(1)	1545-0010
15A.453-1	1545-0228	25.2512-9	1545-0020	31.3402(o)-2	1545-0415
16.3-1	1545-0159	25.2513-1	1545-0020	31.3402(o)-3	1545-0008
16A.126-2	1545-0074	25.2513-2	1545-0020		1545-0010
16A.1255-1	1545-0184		1545-0021		1545-0415
16A.1255-2	1545-0184	25.2513-3	1545-0020		1545-0415
18.1.7	1545-0074	25.2518-2	1545-0959	31.3402(p)-1	1545-0717
18.1271-1	1545-0130	25.2522(a)-1	1545-0196		1545-0415
18.1361-1	1545-0130	25.2522(c)-3	1545-0020		1545-0717
18.1362-1	1545-0130		1545-0196	31.3402(q)-1	1545-0239
	1545-0146	25.2523(a)-1	1545-0020		1545-0239
18.1362-2	1545-0130		1545-0196	31.3404-1	1545-0029
	1545-0146	25.6001-1	1545-0020	31.3406(b)2-3	1545-0112
18.1362-3	1545-0130		1545-0022	31.3406(c)-1	1545-0112
18.1362-4	1545-0130	25.6011-1	1545-0020	31.3406(d)-1	1545-0112
18.1362-5	1545-0130	25.6019-1	1545-0020	31.3406(d)-4	1545-0112
18.1371-1	1545-0130	25.6019-2	1545-0020	31.3406(g)-3	1545-0112
18.1377-1	1545-0130	25.6019-2	1545-0020	31.3406(h)-2	1545-0112
18.1378-1	1545-0130	25.6019-3	1545-0020	31.3406(h)-3	1545-0112
18.1379-1	1545-0130	25.6019-4	1545-0020	31.3501(a)-1T	1545-0771
18.1379-2	1545-0130	25.6061-1	1545-0020	31.3503-1	1545-0024
20.2011-1	1545-0015	25.6065-1	1545-0020	31.3504-1	1545-0029
20.2014-5	1545-0015	25.6075-1	1545-0020	31.3508-1	1545-0115
	1545-0260	25.6081-1	1545-0020	31.6001-1	1545-0798
20.2014-6	1545-0015	25.6091-1	1545-0020	31.6001-2	1545-0034
20.2016-1	1545-0015	25.6091-2	1545-0020		1545-0798
20.2031-2	1545-0015	25.6151-1	1545-0020	31.6001-3	1545-0798
20.2031-3	1545-0015	25.6161-1	1545-0020	31.6001-4	1545-0028
20.2031-4	1545-0015	26.2601-1	1545-0985	31.6001-5	1545-0798
20.2031-6	1545-0015	26.2662-1	1545-0015	31.6001-6	1545-0029
20.2031-7	1545-0020		1545-0985		1459-0798
20.2031-10	1545-0015	27.1-1	1545-0020	31.6011(a)-1	1545-0029
20.2032-1	1545-0015	27.642-1	1545-0020		1545-0034
20.2032A-3	1545-0015	31.3102-3	1545-0029		1545-0035
20.2032A-4	1545-0015		1545-0059		1545-0059
20.2032A-8	1545-0015	31.3121(a)(2)-2	1545-0008		1545-0074
20.2035-1	1545-0015	31.3121(b)(3)-1	1545-0034		1545-0718
20.2039-4	1545-0015	31.3121(b)(19)-1	1545-0029		1545-0258
20.2051-1	1545-0015	31.3121(d)-1	1545-0004	31.6011(a)-2	1545-0001
20.2053-3	1545-0015	31.3121(i)-1	1545-0034		1545-0002
20.2053-9	1545-0015	31.3121(j)-1	1545-0137	31.6011(a)-3	1545-0028
20.2053-10	1545-0015	31.3121(k)-4	1545-0137	31.6011(a)-3A	1545-0955
20.2055-1	1545-0015	31.3121(r)-1	1545-0029	31.6011(a)-4	1545-0034
20.2055-2	1545-0015	31.3121(s)-1	1545-0029		1545-0035
	1545-0092	31.3231(e)-2	1545-0008		1545-0718
20.2055-3	1545-0015	31.3302(a)-2	1545-0028	31.6011(a)-5	1545-0028
20.2056(b)-4	1545-0015	31.3302(a)-3	1545-0028		1545-0028
20.2106-1	1545-0015	31.3302(b)-2	1545-0028	31.6011(a)-6	1545-0028
20.2106-2	1545-0015	31.3302(e)-1	1545-0028	31.6011(a)-7	1545-0074
20.2204-1	1545-0015	31.3306(c)(18)-1	1545-0029	31.6011(a)-8	1545-0028
20.2204-2	1545-0015	31.3401(a)-1	1545-0029	31.6011(a)-9	1545-0028
20.6001-1	1545-0015	31.3401(a)(6)-1	1545-0029	31.6011(a)-10	1545-0112
20.6011-1	1545-0015		1545-0096	31.6011(b)-1	1545-0003
20.6018-1	1545-0015		1545-0795	31.6011(b)-2	1545-0029
	1545-0531	31.3401(a)(7)-1	1545-0029	31.6015-3	1545-0008
20.6018-2	1545-0015	31.3401(a)(8)(A)-1	1545-0029	31.6051	1545-0008
20.6018-3	1545-0015		1545-0666	31.6051-1	1545-0008
20.6018-4	1545-0015	31.3401(a)(8)(A)-2	1545-0029		1545-0008
	1545-0022	31.3401(a)(8)(C)-1	1545-0029	31.6051-2	1545-0008
20.6036-2	1545-0015	31.3401(a)(15)-1	1545-0182	31.6051-3	1545-0008
20.6061-1	1545-0015	31.3401(c)-1	1545-0004	31.6051-4	1545-0112
20.6065-1	1545-0015	31.3402(b)-1	1545-0010		
20.6075-1	1545-0015	31.3402(c)-1	1545-0010		

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31.6053-1	1545-0029	41.6161(a)(1)-1	1545-0143	48.4092-1	1545-0725
	1545-0062	44.4401-1	1545-0235	48.4093-1	1545-0725
	1545-0064	44.4403-1	1545-0235	48.4101-1	1545-0623
	1545-0065	44.4412-1	1545-0236		1545-0725
31.6053-2	1545-0008	44.4901-1	1545-0236		1545-0014
31.6053-3	1545-0065	44.4905-1	1545-0236	48.4101-2T	1545-0725
	1545-0714	44.4905-2	1545-0236	48.4102-1	1545-0023
31.6053-4	1545-0065	44.6001-1	1545-0235		1545-0725
31.6065(a)-1	1545-0029	44.6011(a)-1	1545-0235	48.4161(a)-1	1545-0723
31.6071(a)-1	1545-0001		1545-0236	48.4161(a)-2	1545-0723
	1545-0028	44.6071-1	1545-0235	48.4161(a)-3	1545-0723
	1545-0029	44.6091-1	1545-0235	48.4161(b)-1	1545-0723
31.6071(a)-1A	1545-0955	44.6151-1	1545-0235	48.4181-1	1545-1076
31.6071(a)-1T	1545-0955	44.6419-1	1545-0235	48.4181-2	1545-0723
31.6081(a)-1	1545-0008	44.6419-1	1545-0235	48.4182-1	1545-0023
	1545-0028	44.6419-2	1545-0235		1545-0723
31.6091-1	1545-0028	45.4906-1	1545-0236	48.4182-2	1545-0723
	1545-0029	45.6001-1	1545-0236	48.4221-5	1545-0023
	1545-0955	46.4374-1	1545-0023	48.4221-7	1545-0023
31.6157-1	1545-0029	46.4701-1	1545-0023	48.4221-9	1545-0023
31.6205-1	1545-0029	46.8001-4	1545-0023	48.4216(a)-2	1545-0023
31.6301(c)-1AT	1545-0257	46.8011(a)-1	1545-0023	48.4216(a)-3	1545-0023
31.6301(c)-2AT	1545-0257	46.8011(a)-2	1545-0023	48.4216(c)-1	1545-0023
31.6302(c)-1	1545-0001	46.8061-1	1545-0023	48.4221-1	1545-0023
	1545-0035	46.8065-1	1545-0023	48.4221-2	1545-0023
	1545-0112	46.8071(a)-1	1545-0023	48.4221-3	1545-0023
	1545-0257		1545-0257	48.4221-4	1545-0023
31.6302(c)-2	1545-0001	46.8109-1	1545-0003	48.4221-6	1545-0023
	1545-0257	46.6151-1	1545-0257	48.4221-7	1545-0023
31.6302(c)-2A	1545-0855	46.8302	1545-0257	48.4221-8	1545-0023
31.6302(c)-2AT	1545-0257	47.4341-1	1545-0123	48.4221-9	1545-0023
31.6302(c)-3	1545-0257	47.4345-1	1545-0123	48.4222(a)-1	1545-0023
31.6302(c)-5	1545-0257	47.6001-1	1545-0123		1545-0014
31.6402(a)-2	1545-0256	47.6001-2	1545-0123	48.4222(b)-1	1545-0023
31.6413(a)-1	1545-0029	48.0-1	1545-0723	48.4223-1	1545-0023
31.6413(a)-2	1545-0029	48.0-3	1545-0686	48.4253-3	1545-0023
	1545-0256	48.401-5T	1545-0725	48.4984-1	1545-0725
31.6413(a)-3	1545-0112	48.4041-2T	1545-0143	48.6011	1545-0023
31.6413(c)-1	1545-0029	48.4041-4	1545-0023		1545-1076
	1545-0171	48.4041-5	1545-0023	48.6011(a)-1	1545-0723
31.6414-1	1545-0029	48.4041-6	1545-0023	48.6011(a)-2	1545-0023
32.1	1545-0029	48.4041-7	1545-0023		1545-0723
	1545-0415	48.4041-8	1545-0023	48.6071(a)-1	1545-0257
32.2	1545-0029	48.4041-9	1545-0023		1545-0723
35.3405	1545-0415	48.4041-10	1545-0023	48.6081(a)-1	1545-0723
	1545-0119	48.4041-11	1545-0023	48.6091-1	1545-0723
35.6053-1	1545-0714	48.4041-12	1545-0023	48.6101-1	1545-0723
35a.3406-1	1545-0969	48.4041-13	1545-0023	48.6109-1	1545-0023
35a.3406-2	1545-0112	48.4041-18	1545-0023		1545-0723
35a.9999-3	1545-0112	48.4041-19	1545-0023	48.6151-1	1545-0257
35a.9999-5	1545-0029	48.4041-20	1545-0023	48.6151-1T	1545-0143
36.3121(f)(1)-1	1545-0137	48.4041-21	1545-0977	48.6302(c)-1	1545-0023
36.3121(f)(1)-2	1545-0137	48.4042-2	1545-0023		1545-0257
36.3121(f)(3)-1	1545-0123	48.4042-12	1545-0023	48.6412-1	1545-0723
36.3121(f)(3)(b)	1545-0123	48.4051-1T	1545-0143	48.6416(a)-1	1545-0023
36.3121(f)(1)-4	1545-0137	48.4061(a)-1	1545-0023		1545-0723
36.3121(f)(7)-1	1545-0123	48.4061(a)-2	1545-0023	48.6416(a)-2	1545-0723
36.3121(f)(10)-1	1545-0029	48.4061(b)-3	1545-0023	48.6416(a)-3	1545-0723
36.3121(f)(10)-3	1545-0029	48.4064-1	1545-0014	48.6416(b)-1	1545-0023
36.3121(f)(10)-4	1545-0257		1545-0242	48.6416(b)-2	1545-0023
36.3121(2)(3)	1545-0123	48.4071-1	1545-0023	48.6416(b)-2	1545-0023
38.6302-1	1545-0257	48.4073-1	1545-0023	48.6416(b)(2)-3	1545-1087
41.4481-1	1545-0143	48.4073-3	1545-0023	48.6416(b)-3	1545-0023
41.4481-1T	1545-0143	48.4081-1	1545-0725	48.6416(b)-4	1545-0023
41.4481-2	1545-0143		1545-1074	48.6416(b)-5	1545-0023
41.4482(b)-1T	1545-0143		1545-1087	48.6416(b)(1)-1	1545-0723
41.4483-2T	1545-0143	48.4081-2	1545-0023	48.6416(b)(1)-2	1545-0723
41.4483-3	1545-0143	48.4081-18	1545-0023	48.6416(b)(1)-3	1545-0723
41.4483-3T	1545-0143	48.4082-1	1545-0725	48.6416(b)(1)-4	1545-0723
41.6001-1	1545-0143	48.4083-1	1545-0023	48.6416(b)(2)-1	1545-0723
41.6001-2	1545-0143		1545-0725	48.6416(b)(2)-2	1545-0723
41.6001-3	1545-0143	48.4083-2	1545-0725	48.6416(b)(2)-3	1545-0723
41.6001-3T	1545-0143	48.4084-1	1545-0725		1545-1087
41.6011(a)-1	1545-0143	48.4091-0	1545-0725	48.6416(b)(2)-4	1545-0723
41.6071(a)-1	1545-0143	48.4091-1	1545-0725	48.6416(b)(3)-1	1545-0723
41.6081(a)-1	1545-0143	48.4091-1T	1545-1074	48.6416(b)(3)-2	1545-0723
41.6091-1	1545-0143	48.4091-2	1545-0725	48.6416(b)(3)-3	1545-0723
41.6109-1	1545-0143	48.4091-3	1545-0725	48.6416(b)(4)-1	1545-0723
41.6151(a)-1	1545-0143	48.4091-4	1545-0725	48.6416(b)(5)-1	1545-0723
41.6156-1	1545-0143	48.4091-5	1545-0725	48.6416(c)-1	1545-0723

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48.6416(e)-1	1545-0023	49.4253-4	1545-0023	54.6071-1T	1545-0575
	1545-0723	49.4261	1545-0023	55.6001-1	1545-0123
48.6416(f)-1	1545-0023	49.4264(b)-1	1545-0023	55.6011-1	1545-0999
	1545-0723	49.6011(a)-1	1545-0029		1545-0123
48.6416(g)-1	1545-0723	49.6011(a)-2	1545-0023		1545-1016
48.6416(h)-1	1545-0723	49.6109-1	1545-0029	55.6061-1	1545-0999
48.6420(c)-2	1545-0023	49.6151-1	1545-0257	55.6071-1	1545-0999
48.6420(f)-1	1545-0023	49.6302(c)-1	1545-0257	56.4911	1545-0052
48.6420-0	1545-0723	51.4988-2	1545-0222	56.4911-6	1545-0052
48.6420-1	1545-0162		1545-0226	56.4911-7	1545-0052
	1545-0723	51.4993-1	1545-0230	56.4911-9	1545-0052
48.6420-2	1545-0162	51.4993-2	1545-0230	56.4911-10	1545-0052
	1545-0723	51.4993-3	1545-0230	57.6011(a)-2	1545-0023
48.6420-3	1545-0162	51.4993-4	1545-0230	57.6302(c)-1	1545-0023
	1545-0723	51.4994-1	1545-0224		1545-0257
48.6420-4	1545-0162		1545-0226	103.25	1545-0183
	1545-0723		1545-0912	138.1-2	1545-0023
48.6420-5	1545-0162	51.4995-1	1545-0230	138.1-6	1545-0123
	1545-0723	51.4995-2	1545-0230	138.4064-1	1545-0242
48.6420-6	1545-0162		1545-0912	142.1	1545-0023
	1545-0723	51.4995-3	1545-0023	145.1-1	1545-0745
48.6420-7	1545-0162		1545-0257	145.1-2	1545-0745
	1545-0723	51.4995-4	1545-0023	145.1-3	1545-0745
48.6421(c)-1	1545-0024		1545-0230	145.1-6	1545-0745
48.6421-0	1545-0162	51.4995-5	1545-0230	145.1-7	1545-0745
	1545-0723	51.4996-1	1545-0023	145.4-1	1545-0023
48.6421-1	1545-0162	51.4996-5	1545-0964	145.5-4	1545-0143
	1545-0723	51.4997-1	1545-0222	145.4051-1	1545-0745
48.6421-2	1545-0162		1545-0224	145.4052-1	1545-0120
	1545-0723	51.4997-2	1545-0222		1545-0745
48.6421-3	1545-0162		1545-0224	145.4061-1	1545-0745
	1545-0723	51.6232	1545-0230	148.1-3	1545-0014
48.6421-4	1545-0162		1545-0224	148.1-4	1545-0230
	1545-0723	51.6402-1	1545-0226	150.4989-1	1545-0230
48.6421-5	1545-0162	52.4682-1T(b)(2)(iii)	1545-1153	150.4993-1	1545-0230
	1545-0723	52.4682-2T(b)	1545-1153	150.4995-2	1545-0230
48.6421-6	1545-0162	52.4682-2T(d)	1545-1153	150.4995-3	1545-0023
	1545-0723	52.4682-3T(c)(2)	1545-1153		1545-0257
48.6421-7	1545-0162	52.4682-3T(g)	1545-1153	150.4995-4	1545-0023
	1545-0723	52.4682-4T(f)	1545-1153		1545-0230
48.6424-0	1545-0723	52.6011	1545-0023	150.4995-5	1545-0230
48.6424-1	1545-0723	52.6011(a)-1	1545-0023	150.4996-1	1545-0023
48.6424-2	1545-0723	52.6011(a)-2	1545-0023	150.4997-1	1545-0222
48.6424-3	1545-0723	52.6302(c)-1	1545-0023	150.4997-2	1545-0222
48.6424-4	1545-0723		1545-0257		1545-0224
48.6424-5	1545-0723	53.4940-1	1545-0052	150.6050C-1	1545-0222
48.6424-6	1545-0723		1545-0196	150.6076-1	1545-0222
48.6424-7	1545-0723	53.4942(a)-1	1545-0052	150.6232(c)-1	1545-0224
48.6424-8	1545-0723	53.4942(a)-2	1545-0052	150.6232(c)-2	1545-0224
48.6427-0	1545-0723	53.4942(a)-3	1545-0052	150.6232(c)-3	1545-0224
48.6427-1	1545-0723	53.4942(b)-3	1545-0052	150.6232(c)-4	1545-0224
	1545-0143	53.4945-1	1545-0052	150.6232(c)-5	1545-0224
48.6427-1T	1545-0162	53.4945-4	1545-0052	150.6402-1	1545-0226
48.6427-2	1545-0723	53.4945-5	1545-0052	154.1-1	1545-0014
	1545-0143	53.4945-6	1545-0052		1545-0678
48.6427-2T	1545-0143	53.4947-1	1545-0196	154.2-1	1545-0257
48.6427-3	1545-0723	53.4947-2	1545-0196		1545-0685
48.6427-4	1545-0723	53.4948-1	1545-0052	154.3-1	1545-0023
48.6427-5	1545-0723	53.4961-2	1545-0024	301.6011-2	1545-0225
48.6427-7	1545-0143	53.4963-1	1545-0024		1545-0350
	1545-0162	53.4972-1	1545-0575		1545-0387
48.6675-1	1545-0723	53.6001-1	1545-0052		1545-0441
48.9091-0	1545-0725	53.6011-1	1545-0049		1545-0957
48.9091-1	1545-0725		1545-0052	301.6017-1	1545-0090
48.9091-2	1545-0725		1545-0092	301.6034-1	1545-0092
48.9091-3	1545-0725		1545-0196	301.6035-1	1545-0123
48.9091-4	1545-0725		1545-0052	301.6036-1	1545-0013
48.9091-5	1545-0725	53.6065-1	1545-0049		1545-0773
48.4064-1	1545-0014	53.6071-1	1545-0066	301.6047-1	1545-0367
48.4101-1	1545-0014	53.6081-1	1545-0148		1545-0957
48.4221-3	1545-0023		1545-0575	301.6057-1	1545-0710
48.4221-4	1545-0023	53.6161-1	1545-0197	301.6057-2	1545-0710
48.4221-5	1545-0023	54.4972-1	1545-0575	301.8058-1	1545-0710
48.4222(a)-1	1545-0014	54.4975-7	1545-0575	301.6059-1	1545-0710
48.4222(b)-1	1545-0023	54.4977-1T	1545-0771	301.6059-1	1545-0710
49.4243-11	1545-0023	54.4979-1	1545-1039	301.6103(c)-1	1545-0280
49.4251-1	1545-1075	54.4981A-1T	1545-0203	301.6104-1	1545-0817
49.4251-2	1545-1075	54.6011-1	1545-0575	301.6104-2	1545-0817
49.4253-3	1545-0023	54.6011-1T	1545-0575	301.6104-3	1545-0817

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301.6104-4	1545-0817
301.6104(a)-1	1545-0495
301.6104(a)-5	1545-0056
301.6104(a)-6	1545-0056
301.6104(b)-1	1545-0094
	1545-0742
301.6104(d)-1	1545-0092
301.6109-1	1545-0003
	1545-0295
	1545-0367
	1545-0387
	1545-0967
301.6110-3	1545-0074
301.6110-5	1545-0074
301.6111-1T	1545-0865
	1545-0881
301.6112-1T	1545-0865
301.6114-1T	1545-1126
301.6222(a)-2T	1545-0790
301.6222(b)-1T	1545-0790
301.6222(b)-2T	1545-0790
301.6222(b)-3T	1545-0790
301.6227(b)-1T	1545-0790
301.6231	1545-0099
	1545-0790
301.6231-1T	1545-0790
301.6241-1T	1545-0130
301.6316-4	1545-0074
301.6316-5	1545-0074
301.6316-6	1545-0074
301.6316-7	1545-0029
301.6324A-1	1545-0015
301.6361-1	1545-0074
	1545-0024
301.6361-2	1545-0024
301.6361-3	1545-0074
301.6402-2	1545-0024
	1545-0073
	1545-0091
301.6402-3	1545-0055
	1545-0073
	1545-0091
	1545-0132
301.6402-5	1545-0929
301.6404-1	1545-0024
301.6404-2	1545-0024
301.6404-2T	1545-0024
301.6404-3	1545-0024
301.6404-3T	1545-0024
301.6405-1	1545-0024
301.6501(b)	1545-0074
301.6501(c)	1545-0074
301.6501(d)-1	1545-0074
	1545-0430
301.6501(o)-2	1545-0728
301.6511	1545-0024
301.6511(d)-1	1545-0582
	1545-0024
301.6511(d)-2	1545-0582
	1545-0024
301.6511(d)-3	1545-0024
	1545-0582
301.6652-2	1545-0092
301.6656-1	1545-0794
301.6656-2	1545-0794
301.6685-1	1545-0092
301.6689-1T	1545-1056
301.6707-1T	1545-0865
	1545-0861
301.6708-1T	1545-0865
301.6712-1	1545-1126
301.6723-1T	1545-0909
301.6903-1	1545-0013
301.6905-1	1545-0074
301.7001-1	1545-0123
301.7011-1	1545-0123
301.7101-1	1545-1029
301.7207-1	1545-0092
301.7216-2	1545-0074

CFR part or section where identified and described	Current OMB control number
301.7216-2T	1545-1209
301.7425-3	1545-0854
301.7501-7	1545-0123
301.7507-8	1545-0123
301.7507-9	1545-0123
301.7513-1	1545-0429
301.7517-1	1545-0015
301.7605-1	1545-0795
301.7623-1	1545-0409
301.7654-1	1545-0803
301.7701-16	1545-0795
301.7701(b)-8	1545-0089
301.7805-1	1545-0805
301.9001-1	1545-0220
302.1-7	1545-0024
304.8402-1	1545-0823
305.7701-1	1545-0823
305.7871-1	1545-0823
404.8048-1	1545-0160
420.0-1	1545-0710
Part 502	1545-0844
Part 503	1545-0837
Part 509	1545-0846
Part 513	1545-0834
Part 514	1545-0845
Part 516	1545-0841
Part 517	1545-0849
Part 520	1545-0833
Part 521	1545-0848
601.104	1545-0023
	1545-0233
601.105	1545-0091
601.201	1545-0819
601.204	1545-0152
601.402	1545-0014
601.403	1545-0023
601.601	1545-0800
601.602	1545-0295
	1545-0387
	1545-0957
	1545-0429
601.702	

Dated: January 15, 1991.
Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved:
Kenneth W. Gideon,
Assistant Secretary of the Treasury.
 [FR Doc. 91-4949 Filed 3-1-91; 8:45 am]
 BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF-311; Re: T.D. ATF-306, Notice Nos. 403, 410, 583; 91F009P]

RIN: 1512-AA10

Vodka; Deferral of Compliance Date

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule defers the compliance date with respect to the citric acid limitation set forth in section 5.23(a)(3)(ii) in T.D. ATF-306 to allow for the evaluation of recently received

additional information and data concerning maximum levels for the use of citric acid in vodka.

DATES: This document is effective March 4, 1991. The compliance date for section 5.23(a)(3)(ii) with respect to the citric acid limitation is December 4, 1991.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF-306, (55 FR 49994, dated December 4, 1990), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million) sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka. T.D. ATF-306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the treasury decision.

Petition

Heublein, Inc., has petitioned ATF for reconsideration of T.D. ATF-306, based on a representation that new scientific information and data not previously available has come to their attention concerning maximum levels for the use of citric acid in vodka. Heublein's petition merits further consideration and evaluation.

Heublein stated that recent testing data indicates that there is no reliable difference in sensory perception between vodkas that contain 150 ppm citric acid and vodkas that contain 480 ppm citric acid. Because this evidence is new and has only recently become available, ATF has not had the opportunity to examine it. During the nine month period, a notice of proposed rulemaking will be issued soliciting additional comments on the appropriate levels of citric acid addition to vodka.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF-306 in order to examine recently acquired information submitted by the industry to ATF, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF-306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

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

Disclosure

Copies of the petition, the notices, the Treasury decision, and all comments are available for public inspection during normal business hours at: ATF Reading Room, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) in T.D. ATF-306. The compliance date is December 4, 1991.

Signed: February 21, 1991.
Stephen E. Higgins,
Director.

Approved: February 27, 1991.
John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 91-5162 Filed 2-28-91; 1:46 pm]
BILLING CODE 4510-31-M

DEPARTMENT OF JUSTICE**Office of the Attorney General****28 CFR Part 0**

[Order No. 1478-91]

Authority To Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends subpart Y, part 0, title 28 of the Code of Federal Regulations to increase the settlement and compromise authority delegated to the Assistant Attorneys General of the litigating divisions, and to incorporate existing Department of Justice guidelines requiring approval of certain settlements by the Deputy Assistant Attorney General.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: William A. Aileo, Special Counsel to the Assistant Attorney General, Civil Division, Department of Justice, Rm. 3140, 10th and Pennsylvania Avenue NW., Washington, DC 20530 (202-514-3886).

SUPPLEMENTARY INFORMATION: These amendments represent the first increase in the settlement and compromise authority delegated to the Assistant Attorneys General since 1981. During the intervening period, both the number of cases in litigation and the dollar value of those cases has increased substantially. This increase warrants a corresponding increase in settlement and compromise authority to further the efficient operation of the Department of Justice.

These amendments also incorporate existing Department of Justice guidelines requiring approval by the Deputy Attorney General of settlements prospectively limiting the discretion of an agency or department. These guidelines are designed to ensure that settlements and compromises of claims in litigation do not usurp the proper roles of the executive and judicial branches.

These amendments are exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 509 and 510, 5 U.S.C. 301, and 8 U.S.C. 1103, part 0, subpart Y of title 28, Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]**Subpart Y—Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures**

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4042, 4044, 4082, 4201 et seq., 4241 et seq., 6003(h); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645e, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001-2017p; Pub. L. 91-513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. Section 0.160 is revised to read as follows:

§ 0.160 Offers which may be accepted by Assistant Attorneys General.

(a) Subject to the limitations set forth in paragraph (c) of this section the Assistant Attorneys General of the litigating divisions are authorized, with respect to matters assigned to their division, to:

(1) Accept offers in compromise of claims on behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$2,000,000 or 15 percent of the original claim, whichever is greater.

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed \$2,000,000; and

(3) Accept offers to compromise all nonmonetary cases.

(b) Subject to the limitations set forth in paragraph (c) of this section, the Assistant Attorney General, Tax Division, is authorized to accept offers in compromise of, or settle administratively, claims against the United States, regardless of the amount of the proposed settlement, in any case where the Joint Committee on Taxation has indicated it has no adverse criticism of the settlement.

(c) Any settlement, regardless of the amount of circumstances, must be referred to the Deputy Attorney General:

(1) When, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the monetary limits designated in paragraph (a) of this section.

(2) When the Assistant Attorney General is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by the agency or agencies involved, or for any other reason, the offer should receive the personal attention of the Deputy Attorney General.

(3) When a settlement converts into a mandatory duty the otherwise discretionary authority of an agency or department to revise, amend, or promulgate regulations.

(4) When a settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek a particular appropriation or budget authorization.

(5) When a settlement limits the discretion of a Secretary or agency administrator to make policy or managerial decisions committed to the Secretary or agency administrator by Congress or by the Constitution.

3. Section 0.164 is revised to read as follows:

§ 0.164 Civil claims which may be closed by Assistant Attorneys General.

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to close (other than by compromise or by entry of judgment) civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed the monetary limits designated by § 0.160(a), except:

(a) When for any reason, the closing of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims the total gross amounts of which exceed the monetary limits designated by § 0.160(a).

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the agency or agencies involved, or for any other reason, the proposed closing should receive the personal attention of the Deputy Attorney General or the Attorney General.

4. Section 0.165 is revised to read as follows:

§ 0.165 Recommendations to the Deputy Attorney General that certain claims be closed.

In case the gross amount of the original claim asserted by the Government exceeds the monetary limits designated by § 0.160(a), or one of the exceptions enumerated in § 0.164 is involved, the Assistant Attorney General concerned shall, if in his opinion the claim should be closed, transmit his recommendation to that effect, together with a report on the matter, to the Deputy Attorney General for review and final action. Such report shall be in such form as the Deputy Attorney General may require.

§ 0.168 [Amended]

5. Section 0.168 is amended to add a new paragraph (d) as follows:

(d) Subject to the limitations set forth in § 0.160(c) and paragraph (a) of this section redelegations by the Assistant Attorneys General to United States Attorneys will include the authority to:

(1) Accept offers in compromise of claims on behalf of the United States:

(i) In all cases in which the original claim did not exceed \$500,000; and,
(ii) In all cases in which the original claim was between \$500,000 and \$5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed 15 percent of the original claim;

and,
(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed \$500,000.

Dated: February 26, 1991.

Dick Thornburgh,
Attorney General.

[FR Doc. 91-5005 Filed 3-1-91; 8:45 am]

BILLING CODE 4410-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 205

RIN 0970-AA58

Aid to Families With Dependent Children Program Income and Eligibility Verification System Targeting

AGENCY: Family Support Administration, HHS.

ACTION: Adoption of interim rule as a final rule.

SUMMARY: This rule adopts as final the interim rule published at 53 FR 52709 on December 29, 1988 which implemented changes made in the Aid to Families with Dependent Children (AFDC) program under title IV-A and the Adult Assistance programs under titles I, X, XIV, and XVI (Aid to the Aged, Blind, or Disabled) of the Social Security Act by the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509). Included were provisions to:

- Rescind the requirement that a State must follow up on all information items received under the matching operations of its Income and Eligibility Verification System (IEVS).
- Permit States to allocate their resources to only follow up on those categories of information items which are cost-effective.
- Establish procedures for submitting State targeting plans for approval by the Secretary.
- Revise the timeliness standard for the completion of action from 30 to 45 days.

EFFECTIVE DATE: The interim rule was effective January 30, 1989. This final rule does not change the regulatory text of the interim rule.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Family Support Administration, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone 202-252-5116.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulations

On December 29, 1988, we published an interim rule with comments for the Aid to Families with Dependent Children and Adult Assistance programs (53 FR 52709 (1988)). This final rule responds to the comments we received.

Targeting of information items for Food Stamp recipients who do not receive AFDC or adult assistance is covered by an interim rule published February 2, 1988 by the Food and Nutrition Service (53 FR 2817 (1988)). Targeting of information items for Medicaid recipients for whom the Medicaid agency makes the Medicaid eligibility determination is covered by an interim final rule published March 2, 1989 by the Health Care Financing Administration (54 FR 8738 (1989)).

Discussion of Major Provisions; Responses to Comments

A discussion follows of the major provisions of Public Law 99-509 and the

comments received after the publication of the interim rule. Twenty-five letters were received from States, agencies, and organizations. In addition, we also considered issues raised in the report "After Implementation: State Experience with the Income and Eligibility Verification System (IEVS)" issued by the American Public Welfare Association in April, 1989.

Some comments did not directly relate to the AFDC program, but offered suggestions for improving practices or procedures of other programs, such as SSA or IRS. These comments are not addressed in this rule, but have been passed on to the appropriate agency for their use.

Approval of State Follow-up Plan

The new statutory provision does not relieve States of the responsibility to request information for each individual; rather, it relieves States of the obligation to verify items of information pertinent to eligibility of all recipients. The interim rule revised § 205.56(a)(1) to allow States to choose a strategy of excluding from follow-up categories of information items which are not cost-effective.

States which intend to exclude items from follow-up must submit a State follow-up plan which describes the categories to be excluded and provides a reasonable justification explaining why follow-up would not be cost-effective. The State must include in its justification the effects of overpayments and underpayments in the Food Stamp and Medicaid programs in addition to AFDC cash assistance. A formal cost-benefit analysis is not required.

Comment: Five commenters objected to charging Quality Control (QC) errors originating from IEVS items properly excluded under an approved follow-up plan.

Response: The requirement to develop all IEVS leads as part of the QC program played an important part in the formulation of the interim rule. A formal cost-benefit analysis is not required—it is only necessary for the State to provide a reasonable justification that the proposed targeting is cost-effective. In drafting the interim rule, we considered requiring a formal analysis. However, the State would have had to prove cost-effectiveness through a detailed scientific study showing that the total cost of follow-up was greater than the savings from decreased payment deficiencies.

In the end, we were persuaded that IEVS targeting was a "self-correcting" process with Quality Control playing a vital role by providing important signals to the State on whether the allocation of

staff time and other resources to IEVS is efficient. A dramatic rise in Quality Control errors for unreported income or resources signals that a State's targeting standards are too loosely drawn i.e., too many productive leads are ignored by the local agency. One consequence is that the State could face a possible loss of matching funds. On the other hand, a dramatic drop in resource errors coupled with a rise in other (non-IEVS related) errors may signal another type of problem—that the State has allocated too much staff time and resources to IEVS leads to the detriment of other promising oversight methods or corrective actions.

The linchpin to this approach is the availability of IEVS for Quality Control purposes, without which no reliable signals are transmitted to program managers. Additionally, it is important that the published error rate reflect all IEVS-related errors so that the Department can evaluate whether the State targeting plans have been approved correctly.

Comment: Several commenters complained that implementing different targeting rules for different programs wastes administrative resources. One recommended that the AFDC targeting rule should be extended to all Food Stamp households, another that the Food Stamp regulations should apply to the AFDC recipient who receives Food Stamps.

Response: A single targeting regulation published jointly by the three agencies may simplify State administration in principle, but may prove difficult in practice since it would require targeting plan approval by each of the three agencies. We chose instead to allow States additional flexibility by publishing separate (though similar) regulations. Of course, a State may develop a single targeting plan for each of its programs and request approval from all three agencies.

Comment: One commenter recommended that we waive the requirement for monitoring time frames for follow-up until a State FAMIS system can be certified.

Response: The requirement to monitor time frames was contained in the final rule implementing IEVS published February 28, 1986 (51 FR 7216). States have had ample time to implement an automated system since that time, if desired. We do not believe that any valid purpose would be served through further delay.

Comment: One commenter believes that the law precluded the Office of Family Assistance from having any approval authority over the precise

parameters to be used in the State's targeting priorities.

Response: We do not agree with the comment. Section 1102 of the Social Security Act authorizes the Secretary to promulgate regulations to carry out his statutory responsibilities. Section 1137(a)(4) directs the Secretary to establish standardized procedures for targeting information for follow-up purposes to those uses which are most likely to be productive. We believe the requirements of this regulation are reasonable and necessary for carrying out this statutory directive.

Comment: One commenter suggested setting a tolerance for the IRS match—\$10.00 per annum for dividends.

Response: We have no basis for concluding that establishing a nationwide tolerance for IRS information would be productive. We believe that States can best decide the most productive methods of screening IEVS leads and the level of follow-up necessary to reduce errors consistent with proven cost-effectiveness.

Follow-up of Information Items

Follow-up and Applicants

The provision of the law refers only to follow-up actions with respect to recipients. As a consequence, the interim rule did not change § 205.56(a)(1)(iii) which provides that IEVS-obtained information received during the application period must be used, to the extent possible, to make the initial determination of eligibility.

However, States may not delay a pending application solely to await IEVS information if other evidence establishes the individual's eligibility for assistance. Information requested on an applicant, but received after assistance is authorized, is considered as information regarding a recipient, and may therefore be excluded under an approved follow-up plan.

Comment: Four commenters recommended that States should be afforded the opportunity to justify targeting of IEVS applicant information.

Response: We reconsidered this issue in light of the comments received, but declined to change the current regulations. As we noted in the interim rule, the initial application interview is frequently the only in-depth interview with the family and the State's primary source of information on family income and resources. Responses are frequently inserted into the State automated case system and form the basis for later contacts with the family. Subsequent redeterminations generally focus on recent changes in the family

circumstances as recorded at the time of application. Consequently, it is required that every lead to possible unreported income or resources be investigated and resolved prior to authorization.

Timeframes for Action

Prior regulations at § 205.56(a)(1)(iv) required that the State either initiate a notice of case action or make an entry in the case record that no case action is necessary within 30 days of the receipt of an information item. Completion of action might be delayed beyond 30 days on up to 20 percent of the total information items received, but only if third-party verification has been timely requested and not received. In these cases, appropriate action must be completed no later than the date of the next redetermination or other case action.

The House Report accompanying Public Law 99-509 referred to this 30-day timeframe as too restrictive and suggested a 45-day standard for completion of follow-up. The interim rule revised § 205.56(a)(1)(iv) to allow a 45-day standard for follow-up, allowing completion of action to be delayed beyond this time limit on up to 20 percent of the information items selected for follow-up, but not beyond the date of the next case action or redetermination, whichever is earlier.

Comment: Six commenters recommended that the 45-day rule be revised. One commenter suggested that we allow States to follow SSA in timing follow-up actions to match redeterminations. Other commenters also suggested that we allow a 60 or 90 day follow-up period, allow each State to develop its own timeframe, or start the timeframe at the time the information is received by the local agency.

Response: We considered these comments carefully, but declined to change the requirement. The timeframe of 45 days is specifically mentioned in the conference report accompanying the legislation as the most reasonable for follow-up.

In addition, the small number of comments received shows a general acceptance that the 45-day time frame is not out of line with general administrative practices. We also note that the regulations of the Food and Nutrition Service currently allow for an independent waiver authority for operating procedures under the Food Stamp program. Nevertheless, to date FNS has received no waiver requests—an indication that the current time frame is practical.

We emphasize the States may adopt certain IEVS practices which would

diminish any adverse impact on workload management. The requirement to match the entire caseload the IRS as soon as the data base is available was dropped after the first year. States may now match with the IRS at the times most favorable to their work schedules. Also, § 205.56(a)(1) now allows States to exclude from follow-up unemployment compensation information from the IRS and earnings information from SSA if followed up previously from another source.

Finally, States need not "re-invent the wheel" each year with lengthy investigations of information items which are similar to items resolved previously. As discussed in the preamble to the interim rule, follow-up is considered complete when the State annotates the case file that no case action is necessary because the information items substantially conform to the information in the case file. Further, States are allowed to compile lists or retain documentation of resolution of discrepancies from previous matches, curtailing duplicate development where possible.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. The effect of this regulatory change on the economy will be less than \$100 million and will have an insignificant effect on costs of prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises. Therefore, it is not a major rule within the definition of Executive Order 12291.

Paperwork Reduction Act

The State follow-up plan requirement of this final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB has reviewed and approved these information collection requirements (OMB approval number 0970-0016).

Regulatory Flexibility Analysis

We certify that this action, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program 13.808, Public Assistance.)

List of Subjects in 45 CFR Part 205

Computer technology, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: August 5, 1990.

Jo Anne B. Barnhart,
Assistant Secretary for Family Support.

Approved: December 31, 1990.

Louis W. Sullivan,
Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Accordingly, the interim rule amending 45 CFR part 205 which was published at 53 FR 52709 on December 29, 1988, is adopted as a final rule without changes.

[FR Doc. 91-4657 Filed 3-1-91; 8:45 am]

BILLING CODE 4150-04-M

45 CFR Parts 232, 234, and 235

RIN 0970-AA49

Cooperation in Identifying and Providing Information To Assist States in Pursuing Third Party Health Coverage

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 12304 of the Consolidated Budget Reconciliation Act (COBRA) of 1985 which requires each applicant or recipient to cooperate with the State in identifying and providing information to assist States in pursuing any third party who may be liable to pay for care and services available under State plans for medical assistance under title XIX, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary. The regulations are applicable to the AFDC program in all jurisdictions.

EFFECTIVE DATE: March 4, 1991. Except for § 232.48(g) which contains information collection requirements which are not effective until approved by OMB. When approval is received, HHS will publish the effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Director, Division of Policy, OFA, Family Support Administration, 5th Floor, 370 L'Enfant

Promenade, SW., Washington DC 20447; telephone (202) 252-5119.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulation

On May 24, 1989, a Notice of Proposed Rulemaking for the Aid to Families and Dependent Children program was published in the *Federal Register* (89 FR 22457-22462). It required each AFDC applicant or recipient to cooperate in identifying and providing information to assist States in pursuing any third party who may be liable to pay for care and services available under Medicaid.

Background

Section 12304 of COBRA, Public Law 99-272, amended section 402(a)(26) of title IV-A of the Social Security Act (the Act) by adding a new subparagraph (C) which requires each applicant or recipient to cooperate with the State in identifying and providing information to assist the States in pursuing any third party who may be liable to pay for the care and services available under the State's plan for medical assistance under title XIX of the Act. An individual may be exempted from this requirement if he or she is determined to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary which take into consideration the best interest of the individuals involved. The statute also provides that States shall not be subject to any financial penalty in the administration or enforcement of this provision as a result of any monitoring, quality control, or auditing requirements. According to the conference report, this provision is intended to exclude from the calculation of AFDC fiscal sanctions for assistance payments any errors resulting from the application of this policy. These statutory requirements are effective July 1, 1986.

Discussion of Regulation

These rules require, as a condition of eligibility for AFDC, each applicant and recipient to cooperate with the State in identifying, and in providing information to assist the State in pursuing, any third party who may be liable to pay for medical care and services. This is consistent with the Department's initiative to reduce medical costs to States and the Federal government and with the concept of Medicaid as the payor of last resort. These rules facilitate the pursuit of third-party resources and thereby assist in reducing Medicaid expenditures of States and the Federal government. When used in this provision, "third party" includes any

individual, entity, or program that may be liable to pay all or part of the costs for medical care and services available under title XIX of the Act. The term may also include any employment-related or other individual or group health insurance available to or through the dependent child's parents.

We have added a new section 45 CFR 232.13 to reflect this new eligibility requirement. We have also added language to the current regulations at 45 CFR 235.70 to provide for the prompt notification by each applicant or recipient to the title XIX agency of all relevant information to assist the State title XIX agency in its pursuit of liable third parties. Once information on a third party provider has been furnished by the title IV-A agency to the title XIX agency, the title XIX agency is responsible for developing further information and pursuing the liable third party.

The statute provides that individuals who refuse to cooperate in identifying and providing information to assist the State in its pursuit of third-party liability for medical services must be removed from the assistance unit. The statute also provides that applicants and recipients may be exempted from this new provision if they are determined by the State agency to have good cause for refusing to cooperate in accordance with standards prescribed by the Secretary, which take into consideration the best interests of the individuals involved. This provision is similar in scope to current regulations at 45 CFR 232.12 which provide for such good cause determinations for refusal to cooperate in establishing paternity or obtaining support for an eligible child. Regulations at 45 CFR 232.11 on "Assignment of Rights to Support" currently include standards for making determinations of whether good cause exists for an individual's refusal to comply with child support requirements.

For the sake of consistency, we are requiring that these same good cause standards are applicable to the requirement under this provision. The existing regulations for refusing to cooperate at 45 CFR 232.40-232.49 and 235.70 have been amended, where appropriate, to extend current procedures and policies regarding good cause determinations for child support to this new eligibility requirement. Specifically, we have amended 45 CFR 232.40 (a) and (b); 232.42 (a) and (c); 232.44 (a) and (b); 232.45 (a), (b), and (c); 232.48(g), 232.49 (a), (c) and (d); 235.70 (a) and (b); and Appendix A to Part 232, to incorporate those standards for use in determining good cause claims for refusal to identify and provide

information to assist in the State's pursuit of liable third parties concerning medical services.

These rules also require that the State must provide assistance to an eligible child in the form of protective payments for cases where the caretaker relative refuses to cooperate. This requirement is consistent with similar restrictions imposed in cases where individuals refused to cooperate in employment-related activities or in establishing paternity or obtaining support payments. In the latter case, Congress was concerned that continued receipt of assistance by the uncooperative adult on behalf of other family members would offset, to some degree, the penalty imposed by the State and might lead to a diversion of funds necessary for the well-being of the child.

The requirement to provide assistance in the form of protective payments has proven to be an effective method in meeting these concerns. Extension of this policy for the refusal of an individual to cooperate in identifying and providing information to assist States in pursuing third-party liability for medical services, unless the individual has good cause for refusing to cooperate, is similarly essential for the well-being of the child and is therefore justified under the authority of section 1102 of the Act, which enables the Secretary to make such rules as are necessary for the efficient administration of the program. Accordingly, we have amended 45 CFR 234.60(a) to provide that protective payments are necessary in cases where good cause is not established. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments may be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

Federal financial participation (FFP) is available for gathering third-party liability information as long as the activity is conducted as part of the administration of the title IV-A State plan. Such activities include making good cause determinations and providing assistance in the form of protective payment, as explained in proposed regulation 45 CFR 232.13(c). FFP is not available under title IV-A for activities outside the scope of the administration of the State plan for AFDC, such as for the cost of providing medical care and services.

We consider the information-gathering activities prescribed in this rule, such as interviewing clients and

contacting collateral sources, as part of the administration of the AFDC program. This is necessary because the statute now requires individual applicants or recipients to cooperate in identifying and providing information to assist States in pursuing third party liability for medical care "as a condition of eligibility for aid," unless an individual has good cause for refusing to cooperate. Moreover, the State plan must now require the IV-A agency to provide to the title XIX agency "all relevant information as prescribed by the State Medicaid agency" as set forth in regulations at 45 CFR 235.70(b)(2). Thus, the information-gathering requirement for third party liability is now part of the larger information-gathering requirement for the AFDC eligibility determination—these costs must therefore be claimed under title IV-A.

Current regulations at 45 CFR 304.23(a) deny FFP under title IV-D for activities related to the IV-A program. Only where the State IV-A agency fails to provide the title XIX agency with the information specified under 45 CFR 308.50(a) (this section will be renumbered as § 303.30 as of October 1, 1990), and the IV-D agency is able to collect the information and forward it to the title XIX agency pursuant to that section, is FFP available under the IV-D program. For example, there are situations where the AFDC applicant/recipient does not have information on third party liability which may be available through the absent parent and the IV-D agency is able to obtain the third party liability information during the provision of IV-D services. When this occurs, FFP is available under title IV-D for this activity.

This final rule continues to reflect the major provisions stated in the NPRM. We have, however, made one change to § 232.13(a) regarding the responsibility of the State IV-A Director to determine whether or not an individual has good cause for failing to cooperate in identifying and providing information to assist States in pursuing third parties liable for medical care. Although we received no comments on this provision, after further review we have decided that it is overly burdensome and unnecessarily limits State flexibility in administering the AFDC program. Accordingly, we have removed the words "Director of the State IV-A agency" from the section thereby allowing States the discretion to delegate responsibility for good cause determinations.

Additionally, in order to correspond to the original language of the Social

Security Act, all references to "cooperate in the pursuit of liable third parties" have been changed to "cooperate with the State in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical care and services." We have also clarified the point that the title XIX agency may not attempt to "collect third party information" for the purpose of pursuing third party liability when the collection of this information places an applicant or recipient at risk to physical or mental harm.

We have also incorporated several suggested changes of an editorial nature. One such modification was to change the NPRM references from "State and local agency" to "State or local agency." Another such change was referring to the "IV-D agency or title XIX agency" rather than the "IV-D agency or the Medicaid agency." We have also changed several references from the "Child Support Enforcement agency" to the "title IV-D agency."

Furthermore, in order to be consistent with the Health Care Financing Administration's regulations at 42 CFR 433.138(b), we have changed the language in § 232.13(a)(2) regarding the type of information that should be collected from the applicant or recipient.

With respect to protective payments, the references to work programs that preceded the Job Opportunities and Basic Skills Training (JOBS) Program have been removed and replaced with terminology compatible with JOBS.

Discussion of Comments

Comments were received from three State welfare agencies regarding the proposed rule on third party liability for medical services. These comments are discussed below:

Comment: A commenter questioned whether an AFDC recipient, identifying an absent parent and knowing his whereabouts, should be denied assistance if she doesn't provide information about the absent parent's health insurance coverage. Additionally, if the recipient is unwilling to contact the absent parent, must the IV-A agency attempt to secure health coverage information from him?

Response: Sections 402(a)(26) (B) and (C) of the Social Security Act require all applicants and recipients to cooperate with the State agency in identifying absent parents, unless the individual can show good cause for refusing to cooperate. This includes providing all known information about the absent parent's resources, including health insurance information. The primary responsibility for collecting this

information rests with the State agency. Moreover, the State agency has flexibility in establishing the method of collection—i.e., the State agency determines, on a case-by-case basis, when it is practical for its workers to go directly to the absent parent for the required information or when it is prudent to have the applicant/recipient contact the absent parent. An applicant/recipient who fails to cooperate with the State agency in collecting absent parent information must be sanctioned if such failure is without good cause.

When collecting third party health insurance information, State agency staff must determine if the applicant/recipient has access to information about the absent parent's health insurance and whether contacting this parent can be accomplished without fear for herself or the children's safety. It would be inappropriate to sanction an individual for failure to contact the absent parent if such a contact is physically or mentally threatening to the individual or could be obtained more efficiently by State agency staff.

Comment: One commenter noted that for already overburdened caseworkers, the requirement to collect third party health coverage information from applicants and recipients diminishes the caseworkers' ability to process the case "error free."

Response: The collection of such information is required by statute and should ultimately save time and money for the State.

Comment: A commenter requested clarification as to whether an AFDC applicant or recipient would be ineligible for assistance in the month that she/he refuses or fails to cooperate with the State.

Response: An applicant or recipient is ineligible for assistance for the month he/she is determined to have failed to cooperate without good cause. However, if the State plan, in accordance with the Federal regulations at 45 CFR 233.10(b)(3), includes the provision which permits a payment to be made to an individual for the entire month if such individual was eligible on the date payment was made, ineligibility may begin the month following the month of the determination for failure to cooperate without good cause.

Comment: One commenter asked that if the State, in meeting the requirement to provide the applicant or recipient with a two-part good cause notice, would be permitted to utilize a one-part notice that contains all the elements of the two-part notice.

Response: A one-part notice is acceptable as long as it contains all the

elements of the two-part good cause notice. (See 45 CFR 232.40(b)(3))

Comment: A commenter expressed concern that most IV-D and IV-A agencies have not accepted the fact that title XIX issues are now their responsibility according to statute and regulation and suggested that coordination between the agencies be encouraged.

Response: Strengthening coordination between IV-D and IV-A agencies has been a priority for the Family Support Administration for some time. We believe that this regulation will enhance the relationship and encourage interplay between the two agencies. It is in the best interest of the title IV-D, IV-A and XIX programs to ensure that any information gathered on third party liability during the eligibility interview be forwarded to the IV-D agency to avoid any duplication of effort. We will continue to promote increased interaction between IV-A and IV-D agencies.

Comment: One commenter stated that this regulation will provide incentive to AFDC recipients to cooperate in identifying liable third parties, because no meaningful sanction has been available to States in the past. Another commenter suggested that the definition of "failure to cooperate" be expanded to include refusal to utilize all available third parties. For example, an absent parent could fulfill his legal obligation to provide health coverage by use of a Health Maintenance Organization (HMO). If the HMO was within reasonable distance from a recipient's home, refusal to utilize the HMO should be construed as "failure to cooperate."

Response: Section 402(a)(26)(C) of the Social Security Act requires, as a condition of eligibility for AFDC, that each applicant or recipient must " * * * cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the State's plan for medical assistance under title XIX * * * ." Because this section is limited to "identifying" and "providing" information on third party health coverage, we do not have the authority to expand the statutory provision to include requirements on the utilization of specific health care plans, such as HMOs.

We would like to point out that the Health Care Financing Administration has already addressed this comment in a final regulation entitled "Medicaid Programs; State Plan Requirements and Other Provisions Relating to State Third

Party Liability Programs." This regulation was published in the *Federal Register* on January 16, 1990 (see Vol. 55, No. 10, page 1427).

Regulatory Procedures

Executive Order 12291

These rules do not meet any of the criteria specified in Executive Order 12291 for a major regulation because the cost of implementation is expected to be insignificant.

Paperwork Reduction Act

Public reporting burden for the collection of information requirements at 45 CFR 232.48 is estimated to average 10 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. The information collection requirements of this rule were subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). A notice will be published in the *Federal Register* when OMB approves this information collection requirement.

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it primarily affects State governments and individuals. Thus, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Catalogue of Federal Domestic Assistance Program 13.808, Public Assistance

List of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs—social programs.

45 CFR Part 234

Grant programs—social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 235

Aid to families with dependent children, Fraud, Grant programs—social programs, Public assistance programs.

Dated: August 21, 1990.

Jo Anne B. Barnhart,
Assistant Secretary for Family Support.

Approved: January 24, 1991.

Louis W. Sullivan,
Secretary of Health and Human Services.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

1. The authority citation for part 232 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Part 232 is amended by adding a new § 232.13 to read as follows:

§ 232.13 Cooperation in identifying and providing information to assist the State in pursuing third party liability for medical services.

(a) The State plan must provide that as a condition of eligibility, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49) with the State in:

(1) Identifying any third party who may be liable for care and services available under the State's title XIX State plan in behalf of the applicant or recipient or in behalf of any other family member (including parents and siblings as required under § 206.10(a)(1)(vii) (A) and (B)) for whom the applicant or recipient is applying for or receiving assistance; and

(2) Providing relevant information, consistent with rules issued by the Health Care Financing Administration at 42 CFR 433.138(b), to assist the State in pursuing any such potentially liable third party resources. Such information may include, but is not limited to, the name of the health insurance policy holder, his or her relationship to the applicant or recipient, the social security number of the policy holder, and the name and address of the insurance company and policy number.

(b) The plan shall provide that if the applicant or recipient fails to cooperate as required by this section (unless good cause is determined to exist), the State or local agency shall:

(1) Deny assistance to the applicant or recipient without regard to other eligibility factors; and

(2) Provide assistance to the eligible child in the form of protective payments as described in § 234.60 of this chapter. Such assistance will be determined without regard to the needs of the applicant or recipient.

(c) Federal financial participation (FFP) is available for title IV-A

administrative costs associated with identifying and providing information about a potentially liable third party as part of the eligibility determination for the AFDC program. FFP is also available for IV-A administrative costs associated with determining good cause for failure to cooperate, and providing assistance in the form of protective payments.

3. Section 232.40 is amended by revising paragraphs (a), (b)(1), (b)(2)(i) (A), (B), and (C), and (b)(2)(ii) (C), (E) and (F) to read as follows:

§ 232.40 Claiming good cause for refusing to cooperate.

(a) *Opportunity to claim good cause.* The plan shall provide that an applicant for, or recipient of, AFDC will have the opportunity to claim good cause for refusing to cooperate as required by § 232.12 or § 232.13.

(b) * * *
(1) The plan shall provide that: (i) Prior to requiring cooperation under § 232.12 or § 232.13, the State or local agency will notify the applicant or recipient of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination;

(ii) The notice will be in writing, with a copy furnished to the applicant or recipient; and

(iii) The applicant or recipient and the caseworker will acknowledge that the applicant or recipient received the notice by signing and dating a copy of the notice, which will be placed in the case record.

(2) * * *

(i) * * *
(A) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity, securing support, and identifying and providing information to assist the State in pursuing third party liability for medical services;

(B) Advise the applicant or recipient that by law, cooperation in establishing paternity, securing support, and pursuing liability for medical services is a condition of eligibility for AFDC;

(C) Advise the applicant or recipient of the sanctions provided by §§ 232.12 and 232.13 for refusal to cooperate without good cause;

* * * * *

(ii) * * *
(C) Inform the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation, if necessary, the State or local agency will determine whether cooperation would be against the best interests of the child for whom support

or third party liability for medical services would be sought;

* * * * *
(E) Inform the applicant or recipient that the State title IV-D agency and the State title XIX agency may review the State or local agency's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause; and

(F) As applicable (see § 232.49), inform the applicant or recipient that either: The State title IV-D agency will not attempt to establish paternity and collect support and the State title XIX agency may not attempt to collect third party information or pursue third parties liable for medical services in those cases where the applicant or recipient is determined to have good cause for refusing to cooperate; or the State title IV-D agency may attempt to establish paternity and collect support and the State title XIX agency may pursue liable third parties in those cases where the State or local agency determines that this can be done without risk to the applicant or recipient if done without their participation.

* * * * *

4. Section 232.41 is amended by revising paragraph (d)(2) to read as follows:

§ 232.41 Determination of good cause for refusal to cooperate.

* * * * *

(d) * * *

(2) Continued refusal to cooperate will result in imposition of the sanctions provided in § 232.12 or § 232.13.

5. Section 232.42 is amended by revising the introductory text to paragraphs (a) and (a)(1), paragraphs (a)(2) and (c)(5) to read as follows:

§ 232.42 Good cause circumstances.

(a) Circumstances under which cooperation may be "against the best interests of the child". The plan shall provide that the State or local agency will determine that cooperation in establishing paternity, securing support or identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical services available under the State's title XIX plan is against the best interests of the child only if:

(1) The applicant's or recipient's cooperation in establishing paternity, securing support, or identifying and providing information to assist the State in pursuing third parties potentially liable for medical services is reasonably anticipated to result in:

* * * * *

(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance proceeding to establish paternity, secure support, or to identify and provide information to assist States in pursuing third party liability for medical services would be detrimental to the child for whom support would be sought.

* * * * *

(c) * * *

(5) The extent of involvement of the child in the paternity establishment, support enforcement activity or collection of information to assist the State in the pursuit of third parties to be undertaken.

6. Section 232.44 is revised to read as follows:

§ 232.44 Participation by the State IV-D or Title XIX Agency.

The plan shall provide that:

(a) Prior to making a final determination of good cause for refusing to cooperate, the State or local agency will:

(1) Afford the IV-D agency or the title XIX agency, as appropriate, the opportunity to review and comment on the findings and basis for the proposed determination; and

(2) Consider any recommendation from the IV-D agency or the title XIX agency, as appropriate.

(b) The State or local agency will give the IV-D agency or the title XIX agency, as appropriate, the opportunity to participate in any hearing (under § 205.10 of this chapter) that results from an applicant's or recipient's appeal of any agency action under §§ 232.40 through 232.49.

7. Section 232.45 is revised to read as follows:

§ 232.45 Notice to the IV-D or Title XIX Agency.

The plan shall provide that:

(a) If the notice, required by § 235.70 of this chapter, has previously been provided to the IV-D agency or title XIX agency, as appropriate, the State or local agency will promptly report to the IV-D agency or title XIX agency, as appropriate, that good cause has been claimed;

(b) The State or local agency will promptly report to the IV-D agency or title XIX agency, as appropriate, all cases in which it has determined that there is good cause for refusal to cooperate and, if applicable, its determination whether or not child support enforcement or collection of information identified and provided to assist a State in the pursuit of third

parties potentially liable for medical services may proceed without the participation of the caretaker relative; and

(c) The State or local agency will promptly report to the IV-D agency or title XIX agency, as appropriate, all cases in which it has determined that there is not good cause for refusal to cooperate.

8. Section 232.47 is amended by revising paragraph (b) to read as follows:

§ 232.47 Periodic review of good cause determination.

(b) If it determines that circumstances have changed such that good cause no longer exists, it will rescind its findings and proceed to enforce the requirements of § 232.12 or § 232.13 of this chapter.

9. Section 232.48 is amended by revising the introductory text of the section and paragraph (g) to read as follows:

§ 232.48 Record keeping in good cause.

The plan shall provide that the State will maintain separate records of the good cause claims under § 232.12 and the good cause claims under § 232.13 and will make it possible to submit to the Department, upon request, data concerning:

(g) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate but there was a determination pursuant to § 232.49 that child support enforcement or the collection of information to assist the State in the pursuit of third parties potentially liable for medical services, may proceed without the participation of the caretaker relative; and

10. Section 232.49 is amended by revising paragraphs (a), (c) and (d) to read as follows:

§ 232.49 Enforcement without the caretaker's cooperation.

(a) If the State or local agency makes a determination that good cause exists, it will also make a determination of whether or not child support enforcement or the collection of information identified and provided to assist the State in the pursuit of any third party liable for medical services could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities did not involve their participation;

(c) If the IV-A agency excuses noncooperation but determines that the

IV-D agency or the title XIX agency may proceed to establish paternity, enforce support, or collect information to assist the State in pursuit of liable third parties, it will notify the applicant or recipient to enable such individual to withdraw his or her application for assistance or have the case closed; and

(d) Prior to making this determination under this paragraph, the State or local agency will afford the IV-D agency or the title XIX agency an opportunity to review and comment on the findings and basis for the proposed determination and consider any recommendation from the IV-D agency or the title XIX agency.

11. In part 232, appendix A is revised to read as follows:

Appendix A to Part 232—Model Two-Part Good Cause Notice

This suggested two-part notice format meets the notice requirements of § 232.40(b)(2). The first notice should be provided prior to requiring the applicant's or recipient's cooperation. The second notice should be primarily provided if the applicant or recipient so requests or following a claim of good cause. Receipt of the notice will be acknowledged by the applicant's or recipient's and the worker's signature. The signed copy should be placed in the AFDC case record with one copy retained by the applicant or recipient.

Before being used by a State, this model should be adapted by substituting the appropriate agencies' names.

Notice of Requirement To Cooperate and Right To Claim Good Cause for Refusal To Cooperate in Identifying and Providing Information To Assist States in Pursuit of Third Parties Liable for Medical Services, and in Child Support Enforcement.

Benefits of Child Support Enforcement

Your cooperation in the child support enforcement process may be of value to you and your child because it might result in the following benefits:

- Finding the absent parent;
- Legally establishing your child's paternity;
- The possibility that support payments might be higher than your welfare grant; and
- The possibility that you and your children may obtain rights to future social security, veterans, or other government benefits.

What is Meant by Cooperation?

The law requires you to cooperate with the welfare, child support and Medicaid agencies to get any support (financial or medical) owed to you and any of the children for whom you want AFDC, unless you have good cause for not cooperating.

In cooperating with the welfare, child support and Medicaid agencies, you may be asked to do one or more of the following things:

- Name the parent of any child applying for or receiving AFDC, and give information you have to help find the parents;

- Help determine legally who the father is if your child was born out of wedlock;
- Give help to obtain money owed to you or the children receiving AFDC;
- Pay the State any money which is given directly to you by the absent parent (you will continue to get your full AFDC grant from the State); and
- Identify and provide information to assist the State in the pursuit of any third party who may be liable to pay for medical care and services.

You may be required to come to the welfare office, child support office, court or the State Medicaid agency to sign papers or give necessary information.

What is Meant by Good Cause?

You may have good cause not to cooperate in the State's efforts to collect child support and to provide information to assist the State in pursuing third party liability. You may be excused from cooperating if you believe that cooperation would not be in the best interest of your child, and if you can provide evidence to support this claim.

If You Do Not Cooperate and You Do Not Have Good Cause

- You will be ineligible for AFDC.
- Your children will still be eligible for AFDC for their own needs. Your children's benefits will go to another person, called a "protective payee."

How and When You May Claim Good Cause

- If you want to claim good cause, you must tell a worker that you think that you have good cause. You can do this at any time you believe you have good cause not to cooperate.
- If you claim "good cause" you must be given another notice. This second notice will explain the circumstances under which the Welfare Agency may find good cause, and the type of evidence or other information the Welfare Agency needs to decide your claim. You may also ask for this second notice to help you decide whether or not to claim good cause.

I have read this notice concerning my right to claim good cause for refusing to cooperate.
(Signature of applicant/recipient)

(Date)

I have provided the applicant/recipient with a copy of this notice.
(Signature of worker)

(Date)

Second Notice of Right To Claim Good Cause for Refusal To Cooperate in Identifying and Providing Information To Assist the State in Pursuit of Third Parties Liable for Medical Services, and in Child Support Enforcement

You may claim to have good cause for refusing to cooperate if you believe that such cooperation would not be in the best interests of your child. The following are circumstances under which the Welfare Agency may determine that you have good cause for refusing to cooperate:

- Cooperation is anticipated to result in serious physical or emotional harm to the child;
- Cooperation is anticipated to result in physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately;
- The child was born after forcible rape or incest;
- Court proceedings are going on for adoption of the child; or
- You are working with an agency helping you to decide whether to place the child for adoption.

Proving Good Cause

It is your responsibility to:

- Provide the Welfare Agency with the evidence needed to determine whether you have good cause for refusing to cooperate (If your reason for claiming good cause is your fear of physical harm and it is impossible to obtain evidence, the Welfare Agency may still be able to make a good cause determination after an investigation of your claim).
 - Give the necessary evidence to the agency within 20 days after claiming good cause. The Welfare Agency will give you more time only if it determines that more than 20 days are required because of the difficulty in obtaining the evidence.
- The Welfare Agency may:
- Decide your claim based on the evidence which you give to the agency, or
 - Decide to conduct an investigation to further verify your claim. If the Welfare Agency decides an investigation is needed, you may be required to give information, such as the absent parent's name and address, to help the investigation. The agency will not contact the absent parent without first telling you.

Note: If you are an applicant for assistance, you will not receive your share of the grant until you have given the agency the evidence needed to support your claim, and, if requested, the information needed to permit an investigation of your claim.

Examples of Acceptable Evidence

The following are examples of acceptable kinds of evidence the Welfare Agency can use in determining if good cause exists.

If you need help in getting a copy of any of the documents, ask the Welfare Agency. The Welfare Agency will give you reasonable assistance which is needed to help you obtain the necessary documents to support your claim.

- Birth certificates, or medical or law enforcement records, which indicate that the child was conceived as the result of incest or forcible rape;
- Court documents or other records which indicate that legal proceedings for adoption are pending in court;
- Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the alleged or absent parent might inflict physical or emotional harm on you or the child;
- Medical records which indicate emotional health history and present health status of you or the child for whom support would be sought; or written statements from

a mental health professional indicating a diagnosis or prognosis concerning the emotional health of you or the child;

- A written statement from a public or private agency confirming that you are being assisted in resolving the issue of whether to keep or give up the child for adoption; and
- Sworn statements from individuals, including friends, neighbors, clergymen, social workers, and medical professionals who might have knowledge of the circumstances providing the basis of your good cause claim.

Child Support Agency and Medicaid Agency Participation and Enforcement

The Child Support Enforcement Agency or the Medicaid Agency may review the welfare agency's findings and the basis for a good cause determination in your case. If you request a hearing regarding this issue of good cause for refusing to cooperate, the Child Support Enforcement Agency or the Medicaid Agency may participate in that hearing.

The Notice must include one of the following statements, as applicable depending on the State plan option chosen. See § 232.49.

Option 1. If you are found to have good cause for not cooperating, the Child Support Enforcement Agency may attempt to establish paternity or collect support and the State Medicaid Agency may attempt to collect third party information and pursue third parties potentially liable for medical services only if the welfare agency determines that this can be done without risk to you or your child. This will not be done without first telling you.

Option 2. If you are found to have good cause for not cooperating, the Child Support Enforcement Agency will not attempt to establish paternity or collect support and, as appropriate, the State Medicaid Agency may not pursue third parties potentially liable for medical services.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

(Signature of applicant/recipient)

(Date)

I have provided the applicant/recipient with a copy of this notice.

(Signature of worker)

(Date)

Part 234 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for part 234 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 234.60 is amended by revising paragraphs (a)(1) and (a)(13) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * * (1) If a State plan for AFDC under title IV-A of the Social Security Act provides for protective, vendor and two-party payments for cases other than failure to participate in the Job Opportunities and Basic Skills Training (JOBS) Program under § 250.34(d), or failure by the caretaker relative to meet the eligibility requirements of § 232.11, 232.12, or 232.13 of this chapter. It must meet the requirements in paragraphs (a) (2) through (11) of this section. In addition, the plan may provide for protective, vendor, and two-party payments at the request of recipients as provided in paragraph (a)(14) of this section.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support, cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

Part 235 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 235—ADMINISTRATION OF FINANCIAL PROGRAMS

1. The authority citation for part 235 is revised to read as set forth below, and the authority citations following any section in part are removed.

Authority: Secs. 2, 3, 402, 403, 1002, 1003, 1102, 1402, 1403, 1602, and 1603, Social Security Act as amended (42 U.S.C. 302, 303).

602, 603, 1202, 1203, 1302, and Part XXIII of Pub. L. 97-35, 1352, 1353, 1382, and 1383).

2. Section 235.70 is amended by revising the section heading and introductory text of paragraph (a) and paragraph (b)(2) to read as follows:

§ 235.70 Prompt notice to child support or Medicaid agency.

(a) A State plan under title IV-A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act and to the State title XIX agency, as appropriate, whenever:

* * *

(b) * * *

(2) *Prompt notice* means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. Prompt notice must also include all relevant information as prescribed by the State Medicaid agency for the pursuit of liable third parties. The prompt notice shall be provided within two working days of the furnishing of aid or the determination that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV-A, IV-D and XIX agencies may agree to provide notice immediately upon the filing of an application for assistance.

* * *

[FR Doc. 91-4658 Filed 3-1-91; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-567; RM-7468]

Radio Broadcasting Services; Marquette, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Marquette, Michigan, as that community's third FM broadcast service in response to a petition filed by Iron Mountain-Kingsford Broadcasting Company. See 55 FR 49400, November 28, 1990. Canadian concurrence has been obtained for this allotment at coordinates 46-33-00 and 87-23-36.

EFFECTIVE DATE: April 12, 1991; the window period for filing applications for Channel 231A at Marquette will open on April 15, 1991, and close on May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-567, adopted February 11, 1991, and released February 26, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Michigan, is amended by adding Channel 231A at Marquette.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-4954 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-463; RM-7371]

Radio Broadcasting Services; Coleraine, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241C1 to Coleraine, Minnesota, as that community's first FM broadcast station, in response to a petition filed by Lew Latto. See 55 FR 45621, October 30, 1990. There is a site restriction 8.6 kilometers (5.4 miles) north of the community. Canadian concurrence has been obtained for this allotment at coordinates 47-21-24 and 93-25-47.

EFFECTIVE DATE: April 12, 1991; the window period for filing applications for Channel 241C1 at Coleraine will open on April 15, 1991, and close on May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-463, adopted February 11, 1991, and released February 26, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Minnesota, is amended by adding Channel 241C1, Coleraine.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-4957 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-565; RM-7536]

Radio Broadcasting Services; Deer River, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C1 for Channel 288A at Deer River, Minnesota, in response to a petition filed by Radio Ingstad Minnesota, Inc. See 55 FR 49542, November 29, 1990. We shall also modify the construction permit for Station KXGP, Channel 288A, Deer River, to specify operation on Channel 288C1. Canadian concurrence has been obtained for this allotment at coordinates 47-23-00 and 93-24-10.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-565,

adopted February 11, 1991, and released February 26, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Minnesota, is amended by removing Channel 288A and adding Channel 288C1 at Deer River.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-4955 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-528; RM-7498]

Radio Broadcasting Services; McLain, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to McLain, Mississippi, as that community's first FM broadcast service in response to a petition filed by Community Broadcasting, Inc. See 55 FR 47494, November 14, 1990. There is a site restriction 11.7 kilometers (7.3 miles) southeast of the community to avoid a short spacing to vacant but applied for Channel 243A, Richton, Mississippi. The coordinates for Channel 245A are 31-03-54 and 88-43-01.

EFFECTIVE DATE: April 12, 1991; the window period for filing applications for Channel 245A at McLain will open on April 15, 1991, and close on May 15, 1991.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-528, adopted February 11, 1991, and released February 26, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Mississippi, is amended by adding Channel 245A, McLain.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-4956 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-538; RM-7508]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 233C3 for Channel 233A at

Tomah, Wisconsin, in response to a petition filed by Jamie Lee Westpfahl. See 55 FR 48259, November 20, 1990. We shall also modify the construction permit for Station WZFR, Channel 233A, Tomah, to specify operation on Channel 233C3. The coordinates for Channel 233C3 are 43-57-19 and 90-19-20, with a site restriction 15 kilometers (9.3 miles) east of the community to avoid short spacings to the construction permit for Station WPRE(FM), Channel 232C2, Prairie du Chien, Wisconsin, and the construction permit and modification application for Station KKO(FM), Channel 234A, Caledonia, Minnesota.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-538, adopted February 11, 1991, and released February 26, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW. suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Wisconsin, is amended by removing Channel 233A and adding Channel 233C3 at Tomah.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-4958 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 56, No. 42

Monday, March 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-34-AD]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (Includes MD-80 Series), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing and McDonnell Douglas airplanes, which currently requires certain operational and equipment changes and design modifications to be accomplished to maximize cargo fire detection and protection. The existing rule (AD 89-18-12 R1) was based on the FAA's determination that the existing Class B cargo compartment firefighting procedures and fire protection features did not provide adequate protection from a fire that could occur in main deck cargo areas, and could result in the loss of an airplane if an uncontrolled cargo fire occurred. This proposed action would revise certain portions of the existing rule and allow additional time to comply with certain other requirements. This proposal is prompted by additional information concerning firefighting concepts which has been received since issuance of the original AD, and by reports from operators concerning the severe economic impact caused by implementing the existing AD within the required compliance period.

DATES: Comments concerning the proposed changes to AD 89-18-12 R1, as stated in the proposed rule, must be received no later than March 25, 1991. Comments concerning the remainder of

the proposed rule must be received no later than May 25, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-34-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2670; or Mr. Kevin Kuniyoshi, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-130L, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5337.

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

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

Two separate closing dates for comments have been established. The first closing date, which is 30 days after issuance of this Notice, covers only comments related to those changes to AD 89-18-12 R1 as stated in the proposed rule. This short comment

period has been established so that relief for affected operators may be possible from the May 3, 1991, compliance deadline of AD 89-18-12 R1. A longer comment period is being provided to allow commenters time to prepare the more extensive comments anticipated concerning the balance of the proposal.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-34-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 10, 1989, the FAA issued AD 89-18-12, Amendment 39-6301 (54 FR 34762, August 21, 1989), applicable to certain Boeing and McDonnell Douglas airplanes, to require (1) modification of all Class B cargo compartments to Class C cargo compartments, or (2) the use of flame penetration-resistant cargo containers equipped with smoke detection and fire extinguishing systems, or (3) use of individuals trained to fight cargo fires and certain modifications to Class B cargo compartments and associated systems. That action was prompted by an FAA evaluation of the existing fire protection features of "Combi" airplanes following the loss of a Boeing Model 747-200 "Combi" that developed a major fire in the main deck cargo compartment. That AD was issued to prevent the occurrence of an uncontrolled cargo fire that could cause systems and structural damage, leading to loss of the airplane. The FAA later issued AD 89-18-12 R1, Amendment 39-6557 (55 FR 11163, March 27, 1990), to revise the effective date of the original AD in order to allow additional time necessary to develop the design changes and firefighter training programs required by the original AD.

Since issuance of AD 89-18-12 R1, the FAA has received additional information from manufacturers, airlines, and industry that indicates that paragraphs A. and B. of the AD should be re-evaluated. More importantly, preliminary information from testing performed at the FAA Technical Center indicates that in some cases, actively fighting a fire in a cargo container may be less effective than leaving it alone

until the airplane has landed. This information, which was not available prior to the issuance of AD 89-18-12 R1, has a significant impact on the definition of equipment, procedures, and training needed to effectively fight cargo fires. Training guidelines that take this new information into account could not be provided by the FAA in time for operators to meet the May 3, 1991, compliance deadline of AD 89-18-12 R1 for implementation of the requirement for dedicated firefighters. Certain major design modifications required by paragraph B. of AD 89-18-12 R1 may also be significantly impacted by a change in firefighting procedures.

In addition to the difficulties associated with defining equipment, procedures, and training for implementation of dedicated firefighters by May 3, 1991, recent information from operators indicates that the economic impact of certain portions of AD 89-18-12 R1 may be greater than originally estimated. In particular, the implementation of the requirement for 30-minute walk-through inspections on wide-body "Combis" prior to the availability of a thermal monitoring system could necessitate the hiring of additional personnel, who would no longer be required upon installation of a thermal monitoring system when it becomes available. Thermal monitoring systems for use on narrow-body "Combis" that undergo frequent passenger/cargo mix reconfigurations are expensive and difficult to design. For operators of these airplanes, authorization to use 30-minute walk-throughs in lieu of thermal monitoring systems is more feasible economically, but is not provided for in AD 89-18-12 R1.

In light of the uncertainty concerning firefighting procedures, the harsh economic impact of implementing certain portions of AD 89-18-12 R1 within the prescribed compliance period may not be justified. For this reason, more time is appropriate to allow for the re-evaluation of firefighting equipment, procedures, and training, and the possible re-evaluation of some of the modifications currently required by paragraph B. of AD 89-18-12 R1. In addition, this delay will allow for FAA coordination with the Joint Aviation Authorities, who are currently considering similar rulemaking.

In light of this new information and on-going re-evaluation, the FAA is proposing a new AD which would supersede AD 89-18-12 R1 with a new AD that would (1) delay the requirement for implementation of the "dedicated" firefighter and associated approved

firefighting procedures and training for two years; (2) delay the requirement for implementation of the 30-minute inspections for two years; and (3) allow relief from the requirement to install a thermal monitoring system, provided that 30-minute inspections are continued. This proposed rule essentially accomplishes these changes by moving the requirements for dedicated firefighters and 30-minute inspections to paragraph B., which must be complied with by May 3, 1993. These requirements were previously located in paragraph A. of AD 89-18-12 R1, and therefore had to be accomplished by May 3, 1991.

Comments are requested on all portions of the proposed rule. In addition, comments are requested on the requirements relating to firefighting equipment, procedures, and training. The request for comments is intended to encourage a broad scope of comments concerning the overall content of the proposed rule. Of particular interest are comments concerning cargo compartment liners, the use of fire resistant blankets or igloos in lieu of liners, remote compartment monitoring systems (thermal, video, improved smoke detection), fire knock-down systems, halon substitutes, extinguishant quantities, ventilation control in the cargo compartment, illumination requirements for firefighting, protective garments, firefighting equipment, and two-way communications between the firefighter and cockpit.

The FAA will also consider comments concerning the appropriateness of imposing different "levels" of requirements based on airplane size and other meaningful characteristics. In addition, comments concerning the cost and time required for research, development, and installation of systems required by the proposed rule or alternate proposals are invited. All comments should be specific, provide justification, and, where possible, offer alternatives.

Comments are requested in two phases. Comments concerning the proposed rule, as it differs from AD 89-18-12 R1, are required within a relatively short time frame to ensure issuance of a final rule for this action prior to the current May 3, 1991, compliance deadline of AD 89-18-12 R1. A longer period is allowed for comments concerning the remainder of the proposed rule, which is essentially unchanged from AD 89-18-12 R1, to allow the public adequate time to prepare comments, which are expected to be more extensive. Based on these

later comments, additional rulemaking may be considered.

By using this two-phase process, the FAA intends that safety be assured in the interim by the fact that certain of the requirements of AD 89-18-12 R1, which are scheduled to go into effect as of May 3, 1991, will be effective as of that date, without interruption; the FAA has determined that those requirements are adequate to assure safety in the interim period.

There are approximately 278 Boeing Model 707, 727, 737, 747, and 757 series airplanes and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 Boeing Model 707, 727, 737, 747, and 757 series airplanes, and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes, of U.S. registry have been certified to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently operated in the all-passenger configuration and are, therefore, not affected by this rule. Approximately 40 of these airplanes, presently operated by U.S. operators in the mixed cargo/passenger configuration, would be affected by this proposal.

The design alternative selected by an operator will have a significant impact on the cost of complying with this proposed AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph B.1. of this proposal. A conservative cost estimate for such a modification, based upon costs of required materials, labor, and testing, is \$1,000,000 per airplane. Based on these figures, the total cost of the AD on U.S. operators is estimated to be \$40,000,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the

criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6557 (55 FR 11163, March 27, 1990), AD 89-18-12 R1, with the following new airworthiness directive:

Boeing and McDonnell Douglas: Applies to Boeing Models 707, 727, 737, 747, and 757 series airplanes and McDonnell Douglas Models DC-8, DC-9, (includes MD-80 series), and DC-10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by FAR 25.857(b) or its predecessors, with a volume exceeding 200 cubic feet; certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within one year after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office (for McDonnell Douglas series airplanes):

1. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

Prior to flight, a flight deck crewmember must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

2. Incorporate the following systems and equipment:

a. Provide appropriate protective garments stored adjacent to the cargo compartment entrance.

b. Provide a minimum of 30 minutes of protective breathing. This equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

c. Provide a minimum of 48 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 16 lb. capacity.

d. Provide at least two Underwriters Laboratories (UL)2A (2-1/2 gallon) rated water portable fire extinguishers, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

e. Provide a means for two-way communication between the flight deck and the interior of the cargo compartment.

f. Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

Note: In accordance with paragraph C., below, if the requirements of paragraph B.1. or B.2. of this AD are accomplished within one year after the effective date of AD 89-18-12 R1, compliance with paragraph A. of this AD is unnecessary.

B. Within three years after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph B.1., B.2., or B.3., below:

1. Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60), 25.857(c) and 25.858 (Amdt. 25-54).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c) with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, appendix F, part III, (Amdt. 25-60)."

3. In addition to the requirements of paragraph A.2., above, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for

affected McDonnell Douglas series airplanes), to include the following:

a. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

(1) For airplanes having compartments of 200 square feet or less of cargo/baggage floor area, a minimum of one individual trained to fight cargo fires must be provided. (This individual is in addition to the crew members required by the operational rules.)

(2) Prior to flight, a flight deck crewmember or the individual required by the previous paragraph B.3.a.(1) must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

(3) For airplanes having compartments with more than 200 square feet of cargo/baggage floor area, provide an additional person trained to fight cargo fires to work with the individual required by the previous paragraph B.3.a.(1). (This individual may be a required flight attendant.)

b. Provide a cargo compartment fire "knock down" extinguishing system that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 15 minutes.

c. Provide a smoke or fire detection system that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the station assigned to the individual trained to fight cargo fires. The designated station must be located adjacent to the inflight access door to the cargo compartment.

d. Provide a means from the flight deck to shut off ventilation system inflow to the cargo compartment.

e. Accomplish the requirements of paragraph B.3.e.(1) or B.3.e.(2):

(1) Provide a thermal monitoring system to the flight deck and station designated for the individual trained to fight cargo fire to advise of potentially hazardous conditions within the cargo compartment.

(2) At intervals not to exceed 30 minutes in flight and continuously after a fire has been detected and extinguished, the individual trained to fight cargo fires must conduct a visual inspection throughout the Class B cargo compartment to monitor for evidence of fire.

f. Provide a cargo compartment liner that meets the requirements of FAR 25.855, (Amdt. 25-60). The smoke/fire barrier between the occupants and cargo compartment must extend from the cargo compartment floor to the ceiling liner, or top skin of the airplane, and from the right side liner to the left side liner of the cargo compartment. The liner and barrier seals must also be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F part III (Amdt. 25-60), except that currently-

installed glass fiber reinforced resin material is acceptable. In addition, provide protective covers for cockpit voice and flight data recorders, windows, wiring, and primary flight control systems (unless it can be shown that a fire could not cause jamming or loss of control), and other equipment within the compartment that is required for safe flight and landing; those covers must be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F, part III (Amdt. 25-60).

g. Provide illumination of the cargo compartment as follows:

(1) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height.

(2) Illumination of the access pathways required by paragraph A.2.f. of this AD under visibility conditions likely to be encountered after a fire and discharge of the fire extinguishant, and prior to the decay of extinguishant concentration below 3 percent, must provide an average of 0.1 foot-candle measured at each 40-inch interval, with not less than 0.05 foot-candle minimum along a line that is within 2 inches of and parallel to the floor centered on the pathway.

h. Provide a safe means to effectively discharge portable fire extinguishers into each container or into each pallet that is covered.

i. Establish FAA-approved firefighting procedures for controlling cargo compartment fires.

j. Establish an FAA-approved training program for firefighters required by paragraphs B.3.a.(1) and B.3.a.(3) of this AD.

k. Demonstrate the following features and functions during flight tests:

(1) Fire Extinguishant Concentration, required by paragraph B.3.b. of this AD.

(2) Smoke or Fire Detection System, required by paragraph B.3.c. of this AD.

(3) Prevention of Smoke Penetration into occupied compartments. [Refer to FAR 25.857(b)2 and 25.855 (e)2.]

(4) Compartment Temperature Indication System, if required by paragraph B.3.e. of this AD.

(5) Cargo accessibility, required by paragraph A.2.f. of this AD.

(6) Firefighting procedures, required by paragraph B.3.i. of this AD.

k. Items specified in paragraphs B.3.h(5) and B.3.h(6) of this AD must be evaluated under reduced visibility conditions representative of those likely to occur with cargo fires.

1. Provide a means of two-way communication between the flight deck and the station assigned to the individual trained to fight cargo fires.

C. Compliance with the paragraphs B.1. or B.2. of this AD constitutes terminating action for the requirements of paragraph A. of this AD.

An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for Boeing series airplanes); or the Manager, Los

Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas series airplanes).

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

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

Issued in Renton, Washington, on February 21, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 91-4985 Filed 3-1-91; 8:45 am]

BILLING CODE 4910-13-M

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; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This notice corrects a statement in the Supplementary Information section of the above-captioned notice of proposed rulemaking previously published in the *Federal Register* (56 FR 8628, February 28, 1991). An incorrect closing date of March 29, 1991 was included in the first paragraph of the Supplementary Information section; the correct date for the close of the comment period is April 15, 1991, the date that was cited in the DATES caption.

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.

Issued in Washington, DC on February 28, 1991.

Donald P. Byrne,

Assistant Chief Counsel for Regulations and Enforcement.

[FR Doc. 91-5134 Filed 2-29-91; 11:24 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Docket No. RM84-9-0011

Calculation of Cash Working Capital Allowance for Electric Utilities

Issued February 25, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed rulemaking; denial of rehearing of termination order.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of its order terminating a rulemaking docket instituted by a Notice of Proposed Rulemaking issued on April 5, 1984, in Docket No. RM84-9-000. 49 FR 14,384 (April 11, 1984). The proposed rulemaking would have amended the Commission's regulations by adding a new section relating to the cash working capital allowance for electric utilities. Under the proposed regulations, the cash working capital allowance would have been zero dollars unless a party justified a different result. In denying rehearing, the Commission finds that the statistical evidence in the record of this proceeding, and the Commission's experience in other proceedings since issuance of the proposed regulation, does not support a departure from current practice on the cash working capital allowance for electric utilities.

EFFECTIVE DATE: This denial of rehearing is effective February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Bardee, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0626.

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To

access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this termination order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order Denying Rehearing

Issued February 25, 1991.

In the matter of: *Before Commissioners:* Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On November 14, 1990, the Towns of Norwood, Concord and Wellesley, Massachusetts filed a request for rehearing of the Commission's order issued in this proceeding on October 15, 1990. 53 FERC ¶ 61,052 (1990).

Background

In its October 15, 1990 order, the Commission terminated a rulemaking on the cash working capital allowance for electric utilities instituted by a Notice of Proposed Rulemaking issued on April 5, 1984.¹ Under the proposed regulations, the allowance would have been zero dollars unless a fully developed and reliable lead-lag study demonstrated a significant difference between a utility's average dates for payment of certain operating expenses and receipt of revenues for services to ratepayers. The proposed regulations would have superseded the Commission's practice on cash working capital for electric utilities, summarized as follows:

Where a fully developed and reliable lead-lag study is available in the record, we will utilize that study to determine the working capital allowance. Where a study meeting these criteria is not available we will continue to apply the 45-day convention. However, two adjustments will be made in the latter instance, provided the information is available. Fossil fuel expense has come to represent a major expense item for many utilities and, therefore a substantial component of the O&M expenses. Where this is the case, and the actual lag in the payment for fossil fuel is known, the amount thereof will be substituted as an adjustment to the results otherwise attained by the 45-day rule. Second, where an adjustment for fuel expense lag is made, a further adjustment will be performed as an add-on to the results under the formula, to recognize the increased importance to the utilities of purchased power expense.

¹ FERC Statutes and Regulations, Proposed Regulations 1982-85, ¶ 32,373 (1984) (NOPR).

Carolina Power & Light Co., Opinion No. 19-A, 6 FERC ¶ 61,154 at 61,296 (footnote omitted), *reh'g denied*. 7 FERC ¶ 61,006 (1979).

In terminating the rulemaking, the Commission explained that the evidentiary basis for the proposed regulations consisted of only eight lead-lag studies, based on only five utilities, none of which were chosen as representative of the entire industry. The Commission found this evidence unreliable. The Commission decided not to codify any policy on cash working capital but instead to continue adjudicating the issue case-by-case. The Commission noted that its prior practice had prompted little litigation in the six years since issuance of the NOPR. The Commission concluded that there was not only an insufficient evidentiary basis in this proceeding, but also no cause in its experience since issuing the NOPR, for departing from its prior practice.

In their request for rehearing, the Towns raise essentially two arguments. First, the Towns argue that the 45-day rule is unsupported by any evidence, particularly since the Commission has rejected the 45-day rule for gas companies.² The Towns contend that the 45-day rule is conceptually flawed. They cite the Commission's statements, in rejecting the 45-day rule for gas companies and in proposing similar action for electric utilities, that: (1) computerization and other improvements in billing procedures have reduced the time necessary for billing and payment;³ (2) rejection of the 45-day rule for gas companies was supported by the results of 27 gas company lead-lag studies;⁴ and (3) the 45-day rule's failure to account for all necessary expenses may account for its failure in some cases to properly reflect working cash needs.⁵

The Towns add that their analysis of the eight electric utility lead-lag studies cited above demonstrates that: (1) The mean of the studies is not significantly different from zero, *i.e.*, that the studies support no cash working capital allowance; and (2) statistically, the mean of the studies is almost certainly not 45 days. The Towns argue that these studies constituted the totality of all lead-lag studies found fully developed and reliable by the Commission and

were not shown to contain an anti-utility bias.

Second, the Towns argue that the 45-day rule unlawfully places the burden of proof for cash working capital on customers instead of on utilities seeking an allowance. The Towns argue that, if the eight electric utility lead-lag studies are deemed unreliable, the resulting lack of reliable evidence may not redound to the benefit of the utilities who bear the burden of proof. The Towns argue that the lack of litigation on this issue in recent years is due, not to the justness of the policy, but to the extensive effort a customer must expend to present a fully developed and reliable lead-lag study. The Towns argue that the Commission was established to protect consumers and that avoidance of litigation cannot justify the 45-day rule.

Discussion

For the reasons given below, the Commission will deny the Towns' request for rehearing.

The 45-day rule, as modified over the years, has been the Commission's policy since its initial adoption over 50 years ago in *Interstate Power Company*. 2 FPC 71, 85 (1939). In 1979, the Commission described the "many benefits" of the 45-day rule as follows:

* * * first, it avoids imposing on utilities, and, ultimately, on their consumers, the cost of regularly performing a thorough and detailed lead-lag study. Second, the method has been found to produce reasonable results over the years without the expense of prolonged litigation. Third, it affords substantial advantages from the standpoints of administrative convenience and as an aid to the Commission in managing its large and increasing caseload.⁶

In more recent years, the Commission has continued to find that using the 45-day rule to determine an electric utility's cash working capital allowance results in just and reasonable rates.⁷ In short, contrary to the Town's claim, we find that the 45-day rule continues to represent a reasonable approach in the first instance to determining a utility's cash working capital allowance.⁸

⁶ 6 FERC at 61,295 (footnote omitted).

⁷ *E.g.*, *Niagara Mohawk Power Corporation*, Opinion No. 296, 42 FERC ¶ 61,143 at 61,534 (1988); *Union Electric Company*, Opinion No. 205, 26 FERC ¶ 61,125 at 61,313, *reh'g denied*, Opinion No. 205-A, 27 FERC ¶ 61,008 (1984).

⁸ As we explained in our October 15, 1990 order, however, while we will continue to apply the 45-day rule in the first instance, we will also continue to allow the participants to adjudicate the issue on a case-by-case basis where the participants believe it is appropriate to do so.

² Revisions to the Filing Requirements for Changes in a Tariff, *et al.* Order No. 383, 49 FR 24880, FERC Statutes & Regulations, Regulations Preambles 1982-85 ¶ 30,574 at 30,989-93 (1984).

³ *Id.* at 30,990.

⁴ *Id.* at 30,991.

⁵ FERC Statutes and Regulations, Proposed Regulations 1982-85 at 32,940.

Any change from this approach must be supported by a reasoned analysis and justified by record evidence.⁹ The record in this proceeding does not support such a change. The eight studies cited in the NOPR are not representative of the electric utility industry and thus are unreliable in assessing the cash working capital needs of that industry. The issue of whether these data are biased in favor of utilities or consumers is irrelevant because, in either case, the data are unreliable. Moreover, the Towns' analysis of the mean of the eight studies is no more probative in this rulemaking than are the studies themselves. Since the only statistical evidence in the record of this rulemaking is unreliable, the Commission has no evidentiary basis for altering its policy.

Neither the Commission's rejection of the 45-day rule for gas companies nor the 27 gas company lead-lag studies that justified that action require similar action for electric utilities. The gas and electric utility industries often require different treatment.¹⁰ In the gas company rulemaking, the statistical evidence was deemed reliable and justified a change in policy; here, the evidence is unreliable and cannot support a change in policy. Moreover, the 27 gas company lead-lag studies cannot justify a change in policy for electric utilities. The Commission cannot assume that the cash working capital needs of the two industries are similar.

Moreover, contrary to the Towns' claim, the 45-day rule does not contravene statutory and precedential mandates on who bears the burden of proof. The statute and precedent delineate who has the burden of proof and the 45-day rule does not create an exception to their dictates.

In any section 205 proceeding under the Federal Power Act, the public utility has the burden of proving that its proposed rate increase is just and reasonable.¹¹ Whether or not the filing

utility uses the 45-day rule in developing its proposed rate increase, the filing utility must bear the initial burden of proof and, if challenged, also must bear the burden of ultimate persuasion.¹² The filing utility in meeting its initial burden is entitled to rely on the presumption of reasonableness that attaches to any Commission precedent or policy.¹³ That is, the Commission adopted the 45-day rule because, *inter alia*, the Commission determined that in the first instance the 45-day rule produces reasonable results, and, if the filing utility decides to use the 45-day rule, it is entitled to rely on the 45-day rule and on this determination when it files its proposed rate increase. However, this is not to say that, if challenged, the filing utility need do no more, because the presumption is rebuttable and the challenging party is entitled to argue that in that particular case the 45-day rule does not produce reasonable results.¹⁴

The Towns also argue that the Commission, in deciding to terminate its rulemaking, should not have relied upon the small amount of litigation generated by its current policy. Certainly, the avoidance of litigation is neither the sole consideration nor the primary goal in setting policy. But, the amount of litigation generated by a policy often indicates whether a policy is understandable, workable and accepted by both the regulated community and customers. Thus, the amount of litigation generated by a policy is one of a number of appropriate considerations in setting policy. Here, the lack of excessive litigation, the Commission's findings in recent years that its policy continues to

produce just and reasonable rates, and the lack of evidence supporting a policy change all lead to the same result: no change is needed or justified.

Finally, the Towns argue that the lack of litigation on this issue is due to the substantial burden a customer must incur to present a fully developed and reliable lead-lag study. We acknowledge that the cost and effort needed for such studies may perhaps deter some customers from litigating the issue, but we have no probative basis from which to accurately assess the motives of why parties litigate or do not litigate this issue. In particular, we have no basis for concluding that this burden is the primary reason, or even a major reason, for the lack of litigation. Thus, we are unpersuaded by this argument.

The Commission orders: The Towns' request for rehearing is hereby denied.

By the Commission.
Lois D. Cashell,
Secretary.
[FR Doc. 91-4976 Filed 3-1-91; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 89P-0314]

Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) will hold a public hearing on Vermont's application for exemption from preemption concerning the sale of hearing aids. In preparing a final regulation, the agency will consider the administrative record of hearing, along with comments and other information received.

DATES: Written notice of participation should be filed by March 15, 1991. The hearing will be held on April 9, 1991, from 9 a.m. to 5 p.m.

ADDRESSES: Written notice of participation should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held in Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Bernice Noland, Center for Devices and Radiological Health (HFZ-84), Food and

see also, e.g., FPC v. Tennessee Gas Company, 371 U.S. 145, 152 (1962); *Colorado Interstate Gas Company v. FERC*, 791 F.2d 803, 807 (10th Cir. 1986), *cert. denied*, 479 U.S. 1043 (1987).

¹² As to the initial burden, see 18 CFR 35.13(e)(3) (1990); *accord, e.g., Boston Edison Company, Opinion No. 299-A*, 43 FERC ¶ 61,309 at 61,857 (1988), *aff'd*, 805 F.2d 962 (1st Cir. 1989). As to the burden of ultimate persuasion, see *Southwestern Public Service Company, Opinion No. 337-A*, 51 FERC ¶ 61,130 at 61,367-68 & n.29 (1990), *appeal docketed*, No. 90-1513 (D.C. Cir. June 29, 1990); *Southwestern Public Service Company*, 50 FERC ¶ 61,008 at 61,017 (1990); *see also* 18 CFR 2.17(e) (1990).

¹³ *Cf. Colorado Interstate Gas Company v. FERC*, 904 F.2d 1456, 1459, 1460 (10th Cir. 1990); *Public Service Company of New Mexico v. FERC*, 832 F.2d 1201, 1208-09 (10th Cir. 1987); *ANR Pipeline Company v. FERC*, 771 F.2d 507, 514 (DC Cir. 1985).

¹⁴ The challenging party has the burden of coming forward during the course of the litigation with a showing that the proposed rate increase—and the filing utility's use of the 45-day rule, in particular—is not just and reasonable. 51 FERC at 61,368; *New England Pool, Opinion No. 342*, 50 FERC ¶ 61,139 at 61,425 (1990); 50 FERC at 61,017; *see also East Tennessee Natural Gas Company v. FERC*, 863 F.2d 932, 937-38 (DC Cir. 1988); *Sea Robin Pipeline Company v. FERC*, 795 F.2d 182, 183-84, 186-87 (DC Cir. 1986); 771 F.2d at 513-14; *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 1345 (DC Cir. 1980), *cert. denied*, 454 U.S. 879 (1981).

⁹ *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 42 (1983); *Center for Science in the Public Interest v. Dep't of Treasury*, 797 F.2d 995, 999 (D.C. Cir. 1986); *St. James Hosp. v. Heckler*, 790 F.2d 1460, 1472 (7th Cir.), *cert. denied*, 474 U.S. 902 (1985).

¹⁰ *Cities of Aitkin v. FERC*, 704 F.2d 1254, 1257 n.4 (D.C. Cir. 1982); *Arkansas Louisiana Gas Co. v. FERC*, 654 F.2d 435, 439 n.8 (5th Cir. 1981); *Southwestern Public Service Co., Opinion No. 330-A*, 53 FERC ¶ 61,084 at 61,241 n.23, *reh'g denied*, *Opinion 339-B*, 53 FERC ¶ 61,406 (1990), *appeal filed*, No. 90-1513 (D.C. Cir. filed November 1, 1990).

¹⁰ *Cities of Aitkin v. FERC*, 704 F.2d 1254, 1257 n.4 (D.C. Cir. 1982); *Arkansas Louisiana Gas Co. v. FERC*, 654 F.2d 435, 439 n.8 (5th Cir. 1981); *Southwestern Public Service Co., Opinion No. 339-A*, 53 FERC ¶ 61,084 at 61,241 n.23, *reh'g denied*, *Opinion 339-B*, 53 FERC ¶ 61,406 (1990), *appeal filed*, No. 90-1513 (D.C. Cir. filed November 1, 1990).

¹¹ Section 205(e) of the Federal Power Act imposes the burden of proof on a public utility for any "rate or charge sought to be increased." 16 U.S.C. § 824(d) (1988); *accord, e.g., Northern States Power Company*, 53 FERC ¶ 61,039 at 61,150 (1990);

Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 30, 1990 (55 FR 45615), FDA published a proposed rule responding to an application by the State of Vermont for exemption from Federal preemption for certain State medical device requirements.

In the same document, FDA also issued a notice of opportunity for interested persons to request an oral hearing on the proposed rule. The document explained that interested persons could request an oral hearing on or before December 31, 1990. FDA has received several requests for an oral hearing.

Accordingly, FDA announces that an oral hearing regarding the Vermont application for exemption from preemption of its medical device laws and regulations. The oral hearing will be directed by George A. Brubaker, Deputy Director, Center for Devices and Radiological Health, Office of Standards and Regulations, Food and Drug Administration.

After reviewing the comments and the notices of appearance, FDA will schedule each appearance and notify each person of the time allotted for each appearance. The procedures to govern the hearing are those applicable to a public hearing before the Commissioner of Food and Drug under part 15 (21 CFR part 15).

Interested persons who wish to participate may, on or before March 15, 1991, submit a notice of participation with the Dockets Management Branch (address above). All notices submitted should be identified with the Docket number found in brackets in the heading of this document and should contain the name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Individuals and groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing

schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 89P-0314.

The administrative record of the proposed regulation will be open for 15 days after the hearing to allow comments on matters raised at the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch.

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officers and panel members may question any person during or at the conclusion of their presentation.

This document is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 [21 U.S.C. 360k]) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10).

Dated: February 27, 1991.

Gary Dykstra,

Acting Associate Commissioner, for Regulatory Affairs.

[FR Doc. 91-5041 Filed 3-1-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-91-1498; FR-2713-P-01]

RIN 2502-AE84

Mutual Mortgage Insurance and Rehabilitation Loans—Waiver of Seven Unit Rule for Certain Rehabilitation Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to remove the "seven-unit" requirement of 24 CFR 203.42, in certain circumstances. Generally, under § 203.42 a property cannot be insured under the Single Family Mortgage Insurance program if a mortgagor has a financial interest in more than seven other units in projects, subdivisions or other rental properties close in proximity. This amendment proposes to exempt mortgagors of single-family properties insured under the section 203(k) rehabilitation loan

program in circumstances where State or local governments have targeted a specific area or neighborhood for redevelopment and have committed "substantial" efforts to this end. The purpose of this rule is to encourage and facilitate rehabilitation activity in the targeted areas.

DATES: Comment Due Date: May 3, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying on weekdays between 7:30 a.m. to 5:30 p.m. 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 number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Docket Clerk at ((202) 708-2084). Hearing- or speech-impaired individuals may call the TDD number for the Rules Docket Clerk (202) 708-3259. (These are not toll free numbers.)

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director Single Family Development Office of Single Family Housing, Department of Housing and Urban Development, Room 9272, 451 Seventh Street, SW., Washington, DC 20410-0500, (202) 708-2700. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in

the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, **Other Matters**. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

In enacting the National Housing Act (the Act), Congress provided HUD with the authority to insure, and make commitments to insure, rehabilitation loans made by financial institutions. In section 203(k) of the Act (12 U.S.C. 1709(k)), Congress defined "rehabilitation loans" as those made for the purpose of rehabilitating existing one- to four-family structures used primarily for residential purposes. HUD promulgated 24 CFR 203.50, which made rehabilitation loans eligible for insurance under the Single Family Mortgage Insurance program.

To prevent misuse of this program by lenders who may want to circumvent the requirements of the Multifamily Mortgage Insurance program, and to preclude insurance of a concentration of rental units for one investor, § 203.42 was promulgated. Section 203.42 had the effect of severely limiting the use of the section 203(k) insurance program because it limited mortgage insurance coverage to no more than seven units per mortgagor in a particular geographic area. (This limitation is commonly referred to as the "seven unit rule.") Since its inception ten years ago, only 7,000 mortgages have been insured under section 203(k).

The seven unit rule, as applied to rehabilitation loans, can limit expansion of affordable housing and home ownership opportunities. This runs counter to HUD's objective of increasing such opportunities. For this reason, changes are required in the rule. Several

lenders and developers have agreed that a successful rehabilitation program must include all or nearly all the vacant and deteriorated properties in a neighborhood. Since such an approach may include developers who have an interest in more than seven units, little is gained by applying the limitation of § 203.42 to rehabilitation loans.

This proposed rule would permit increased use of section 203(k). Last year, approximately 400 mortgages were issued under the section 203(k) program. This proposed rule could increase its use to 2,500 mortgages for fiscal year 1991. This objective would be obtained by expressly exempting rehabilitation loans from the seven unit rule, provided that the loans are to be used for the rehabilitation of property located in a specific area or neighborhood targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of the neighborhood redevelopment. The proposed rule would require the State or local government to submit a plan to HUD describing the program of neighborhood redevelopment, before HUD exempts a section 203(k) rehabilitation loan from the seven unit rule. Finally, this proposed rule would revise and update the language of § 203.42.

Other Matters

Impact on Economy. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to exempting certain

rehabilitation loans from the multifamily mortgage insurance program requirements. Any entity, regardless of size, may benefit from this exemption.

Regulatory Agenda. This rule was listed as sequence number 1181 in the Department's Semiannual Agenda published on October 29, 1990 (55 FR 44530, 44545) under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Information Collection Requirements. The information collection requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. The Department has determined that § 203.42(b)(3) of the proposed rule contains collection of information requirements.

Description of respondents. Units of State or local government.

Description of information. The information to be provided would be a copy of the plan describing the program of redevelopment for a specific area or neighborhood targeted by the State or local government for redevelopment. The information presented in the plan would include identification of the geographic area to be redeveloped, a description of the planned redevelopment, and identification of the public and private commitments, including the nature and proportion of such commitments, that have been made in support of the redevelopment program. This information would only be required when a mortgagor is requesting waiver of the seven unit rule under the circumstances described in § 203.42(b). This information would be needed by the Department to determine whether waiver of the seven-unit rule is appropriate. The following table discloses the Department's estimated burden for the collection of information requirements of this rule.

Section of 24 CFR affected	No. of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
203.42(b)(3)	10	1	10	160	1600

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the order. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal, State or local governments.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

[The Catalog of Federal Domestic Assistance Program Number is 14.108, Rehabilitation Mortgage Insurance]

List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians: lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly 24 CFR part 203 would be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for part 203 would continue to read as follows:

Authority: Secs. 203, 211 of the National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.42 would be revised to read as follows:

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for

insurance if the property is a part of, or adjacent or contiguous to, a project, subdivision or group of similar rental properties in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The state or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling, if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the dwelling is subject to any insured mortgage.

Dated: February 22, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc. 91-4952 Filed 3-1-91; 3:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-015-90]

RIN 1545-A058

Accuracy-Related Penalty

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the accuracy-related penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, and substantial (or gross) valuation misstatement under chapter 1 of the Internal Revenue Code. The applicable tax law was amended by the Omnibus Budget Reconciliation Act of 1989. The proposed regulations would affect all taxpayers that file returns of income tax and are necessary to provide them with guidance to comply with these changes.

DATES: Written comments must be received by May 15, 1991. The Service intends to hold a public hearing on these proposed regulations during the week of June 3 through 7, 1991. Persons wishing to speak at this hearing must deliver outlines of their comments by May 15, 1991. A notice of public hearing will be published in the Federal Register in the near future.

ADDRESSES: Send comments and requests to speak at the public hearing to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-015-90), Washington, DC 20224. If desired, comments and requests to speak may be hand-delivered to the Internal Revenue Service, Attn: CC:CORP:T:R (IA-015-90), Room 4429, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gail M. Winkler of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC, 20224 (Attention: CC:IT&A:Br4) or telephone 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the office of Management; and Budget, Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington,

D.C. 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.6662-4(f). This information is required by the Internal Revenue Service for a taxpayer to make a proper disclosure in order to avoid imposition of certain penalties. This information will be used to carry out the internal revenue laws of the United States. The likely respondents are individuals, trusts, partnerships, corporations or other for-profit institutions or organizations, as well as not-for-profit institutions that are subject to the unrelated business income tax.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 4.79 hours.

Estimated number of respondents: 3,000,000.

Estimated frequency of responses: annually.

Background

This document contains proposed Income Tax Regulations under section 6662 of the Internal Revenue Code of 1986 (Code), which imposes an accuracy-related penalty, and under section 6664 of the Code, which provides definitions and rules for purposes of this penalty and the fraud penalty imposed by section 6663 of the Code. Section 6662 was amended, and section 6664 was added to the Code, by section 7721(a) of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, 103 Stat. 2106 (OBRA 1989).

An earlier draft of these proposed regulations was made available to the public without Internal Revenue Service approval prior to filing of this document with the Federal Register. This document contains substantial revisions from the earlier draft of the proposed regulations, and taxpayers and tax practitioners should not, in any way, rely upon any provisions contained in the earlier draft, nor should any inferences be drawn from changes made between these proposed regulations and the earlier draft.

Overview

OBRA 1989 substantially revised the civil tax penalty provisions of the Internal Revenue Code, generally

effective for returns due (without regard to extensions) after December 31, 1989. Section 7721 of OBRA 1989 modified and reorganized the penalties formerly contained in numerous Code sections (section 6653, negligence and fraud; section 6659, valuation overstatements; section 6659A, overstatements of pension liabilities; section 6660, estate and gift tax valuation understatements; and section 6661, substantial understatements) into two sections (section 6662, the new accuracy-related penalty; and section 6663, the fraud penalty). OBRA 1989 also added new section 6664 to the Code, which provides definitions and rules for purposes of sections 6662 and 6663.

The accuracy-related penalty enacted by OBRA 1989 may be imposed on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following types of misconduct: (i) Negligence or disregard of rules or regulations; (ii) a substantial understatement of income tax; (iii) a substantial (or gross) valuation overstatement under chapter 1; (iv) a substantial (or gross) overstatement of pension liabilities; and (v) a substantial (or gross) estate or gift tax valuation understatement. Section 11312 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388, renamed the substantial valuation overstatement component of the accuracy-related penalty the substantial valuation "misstatement" penalty and broadened this penalty to apply to certain transactions between persons described in section 482 and to certain net section 482 transfer price adjustments.

These proposed regulations provide rules only for the first three components of the accuracy-related penalty, i.e., the penalties for (i) negligence or disregard of rules or regulations, (ii) a substantial understatement of income tax, and (iii) a substantial (or gross) valuation misstatement under chapter 1. In addition to not addressing the remaining two components of the accuracy-related penalty, these proposed regulations do not consider how (i) the penalty for negligence or disregard of rules or regulations applies in the context of taxes other than income taxes imposed under subtitle A of the Code, or (ii) the penalty for a substantial (or gross) valuation misstatement applies in the context of transactions between persons described in section 482 or of net section 482 transfer price adjustments. The Service will issue one or more notices of proposed rulemaking at a later date (or dates) to address these other issues. The Service will not wait until issuance of

such notices, however, to begin asserting these other penalties or the negligence and substantial (or gross) valuation misstatement penalties in these other contexts.

The accuracy-related penalty is 20 percent of the portion of an underpayment that is attributable to the misconduct (e.g., to negligence, a substantial understatement or a substantial valuation misstatement) listed in section 6662(b). The penalty rate is increased to 40 percent in the case of a gross valuation misstatement under chapter 1 (or a gross overstatement of pension liabilities or gross estate or gift tax valuation understatement).

There is no stacking of components of the accuracy-related penalty. Thus, the maximum accuracy-related penalty imposed on any portion of an underpayment may not exceed 20 percent (40 percent in the case of a gross valuation misstatement) even though the portion may be attributable to more than one type of misconduct. The accuracy-related penalty is not imposed on any portion of an underpayment on which the fraud penalty is imposed. The accuracy-related penalty may be imposed only in those cases in which a return of tax is filed. Both the accuracy-related penalty and the penalty imposed by section 6651 for failure to timely file a return may be imposed if a return is filed late. No accuracy-related penalty will be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy-related penalty is set forth in section 6664 of the Code.

Negligence or Disregard of Rules or Regulations

Section 1.6662-3 of the proposed regulations provides rules for the penalty for negligence or disregard of rules or regulations. This penalty applies if any portion of an underpayment of tax required to be shown on a return for a year is attributable to negligence or disregard of rules or regulations. "Negligence" includes any failure to make a reasonable attempt to comply with the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. A taxpayer also is negligent if the taxpayer fails to keep proper books and records or to substantiate items properly. A position with respect to an item is considered to be attributable to negligence if it is frivolous or if it is not frivolous, but lacks a reasonable basis.

Negligence is strongly indicated where a taxpayer fails to include income shown on an information return, such as a Form 1099, or fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion which would seem to a reasonable and prudent person to be "too good to be true" under the circumstances. Negligence also is strongly indicated where the returns of a partner and partnership or of an S corporation shareholder and S corporation are not consistent in the manner prescribed by sections 6222 and 6242, respectively.

"Disregard of rules or regulations" includes any careless, reckless or intentional disregard of the Code, temporary or final Treasury regulations, or revenue rulings. A disregard of rules or regulations is "careless" if the taxpayer does not exercise reasonable diligence to determine the correctness of a return position that is contrary to the rule or regulation. A disregard is "reckless" if the taxpayer makes little or no effort to determine whether a rule or regulation exists, under circumstances that demonstrate a substantial deviation from the standard of conduct that a reasonable person would observe. A disregard is "intentional" if the taxpayer knows of the rule or regulation that is disregarded. A taxpayer will not be considered to have disregarded a revenue ruling, however, if the position contrary to the ruling has a realistic possibility of being sustained on its merits. The realistic possibility standard is described in § 1.6694-2(b) of the preparer penalty regulations.

Pursuant to the legislative history of OBRA 1989, the proposed regulations provide that the penalty for negligence or disregard of rules or regulations will not be imposed if the taxpayer adequately discloses certain positions taken on the return. Under the proposed regulations, disclosure is adequate for purposes of the negligence or disregard penalty only if made on a properly completed and filed Form 8275, Disclosure Statement, attached to the return or to a qualified amended return. In addition, in the case of a position contrary to a rule or regulation, the statutory or regulatory provision or ruling in question must be adequately identified on the Form 8275. The disclosure rules are proposed to be effective for returns due after December 31, 1991, and, accordingly, after that date disclosure will no longer be adequate for purposes of the negligence or disregard penalty if made on the return itself, as currently permitted by Notice 90-20, 1990-1 C.B. 328. (See,

however, § 1.6662-4(f) which permits disclosure on the return in accordance with an annual revenue procedure for purposes of the substantial understatement penalty.)

Disclosure will not prevent imposition of the negligence or disregard penalty if the position disclosed is frivolous or if the taxpayer failed to keep proper books and records or to substantiate items properly. The disclosure rules for purposes of the negligence or disregard penalty are set forth in § 1.6662-3(c)(2). The definition of a qualified amended return is set forth in § 1.6664-2(c)(3).

The proposed regulations also provide that the penalty will be imposed on any portion of an underpayment for a year to which a loss, deduction, or credit is carried that is attributable to negligence or disregard of rules or regulations in the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year). A transition rule provides that the negligence or disregard penalty will apply to any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to negligence or disregard of rules or regulations in a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989.

Substantial Understatement of Income Tax

Section 1.6662-4 of the proposed regulations provides rules for the penalty for a substantial understatement of income tax. This penalty is imposed on any portion of an underpayment that is attributable to a substantial understatement of income tax. Changes have been made to certain of the rules currently set forth in regulations under former section 6661. These changes include the following:

First, in accordance with the legislative history of section 6662, the definition of "authority" has been broadened. This expanded definition is set forth in § 1.6662-4(d)(3)(iii). "Authority" under the proposed regulations includes private letter rulings and technical advice memoranda issued after October 31, 1976, and general counsel memoranda and actions on decisions issued after March 12, 1981.¹ A special rule provides that there

¹ Private letter rulings and technical advice memoranda were first required to be made available to the public on October 31, 1976, and general counsel memoranda and actions on decisions were first required to be made available on March 12, 1981.

is substantial authority with respect to a position on a return that is due after December 31, 1982 and before January 1, 1990, if there is substantial authority for such position under either the expanded or more narrow definition of authority. If the expanded definition is used, authorities on the expanded list that are against the position, as well as those that are for the position, must be taken into account.

The proposed regulations further provide that an authority ceases to be an authority if overruled or modified, implicitly or explicitly, by an authority of the same or higher source. For example, a private letter ruling will not be considered authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling, or other administrative pronouncement published in the Internal Revenue Bulletin. In determining whether authority is substantial, an older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally will be accorded less weight than a more recent one and any such document that is more than ten years old generally will be accorded very little weight.

Second, the proposed regulations provide for only two methods of disclosure in order for items to be treated as though they were properly shown on the return for purposes of the substantial understatement penalty. The first is disclosure on a Form 8275 attached to the return (or a qualified amended return). The second is disclosure in accordance with the annual revenue procedure that permits disclosure on the return itself (or a qualified amended return) for this purpose. The disclosure rules are proposed to be effective for returns due after December 31, 1991, and, accordingly, after that date disclosure made on the return itself (other than in accordance with the annual revenue procedure), as currently permitted by Notice 90-20, will no longer be adequate. The disclosure rules are set forth in § 1.6662-4 (e) and (f). The definition of a qualified amended return is in § 1.6664-2(c)(3).

Third, the method for determining whether an understatement of tax is substantial has been modified for a year in which a carryback or carryover of a loss, deduction or credit arises (a loss or credit year). The determination of whether there is a substantial understatement for a loss or credit year is to be made by treating any understatement that is attributable to a carryback or carryover item as an

understatement with respect to the return of the loss or credit year. The proposed regulations also provide transition rules, both in cases where the loss or credit year return falls under section 6662 but the carryback year return was due prior to the effective date of section 6662, and in cases where the loss or credit year return falls under former section 6661 but the carryover year return is due on or after the effective date of section 6662.

Substantial (or Gross) Valuation Misstatement

Section 1.6662-5 provides rules for the penalty for a substantial (or gross) valuation misstatement under chapter 1. This penalty applies if any portion of an underpayment of tax is attributable to a substantial (or gross) valuation misstatement.

There is a substantial valuation misstatement if the value or adjusted basis of property claimed on a return is 200 percent or more of the correct amount. The valuation misstatement is gross if the value or adjusted basis of property claimed on a return is 400 percent or more of the correct amount. A 20 percent penalty rate applies to any portion of an underpayment of tax that is attributable to a substantial valuation misstatement, and a 40 percent penalty rate applies to any portion of an underpayment that is attributable to a gross valuation misstatement. No penalty may be imposed for a valuation misstatement unless the portion of the underpayment that is attributable to substantial (and gross) valuation misstatements for the taxable year exceeds \$5,000 (\$10,000 for most corporations).

A special rule is provided in the case of carrybacks and carryovers. The penalty applies to any portion of an underpayment for a carryback or carryover year that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover arises (the loss or credit year), provided the applicable dollar limitation (\$5,000 or \$10,000) is satisfied for the carryback or carryover year. A transition rule makes clear that the penalty applies to any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to a substantial or gross valuation misstatement for a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989, provided the applicable dollar limitation is met in the carryback year.

"Property" is defined by the proposed regulations for purposes of this penalty

to include both tangible and intangible property. The proposed regulations provide that the determination of whether a valuation misstatement is substantial or gross is to be made on a property-by-property basis, but that the determination of whether the applicable dollar limitation is satisfied is to be made on an aggregate basis, *i.e.*, by aggregating all portions of an underpayment for a year that are attributable to a substantial or gross valuation misstatement for that year. The proposed regulations further provide that, regardless of amount, a valuation misstatement is gross if the correct value or adjusted basis of the property is zero. In the case of a pass-through entity, the determination of whether a valuation misstatement is substantial or gross is to be made at the entity level, but the dollar limitation is to be applied at the partner, shareholder, beneficiary, or residual interest holder level. The penalty applies to all taxpayers, including C corporations. The penalty also may apply in a year subsequent to the year with respect to which the original valuation misstatement is made (for example, if a taxpayer claims an inflated basis for depreciable property in the year the property is placed in service and continues to claim depreciation deductions based on the inflated basis in subsequent years), notwithstanding that the original misstatement was on a return that was due (without regard to extensions) before January 1, 1990. There is no disclosure exception to the valuation misstatement penalties.

Underpayment

Section 1.6664-2 of the proposed regulations defines the term "underpayment" solely by reference to income taxes imposed under subtitle A and solely for purposes of the accuracy-related and fraud penalties set forth in sections 6662 and 6663, respectively. Section 6664(a) defines "underpayment" as the amount by which any tax imposed exceeds the excess of (i) the sum of the amount shown as the tax by the taxpayer on his return, plus amounts not so shown previously assessed (or collected without assessment), over (ii) the amount of rebates made.

The proposed regulations define "the amount shown as the tax by the taxpayer on his return" as the tax liability reported on the return less any overstated prepayment credits claimed by the taxpayer on the return. Overstated withholding credits and estimated tax payments, therefore, will lower "the amount shown as the tax by the taxpayer on his return" and increase

the amount of an underpayment. (The "amount of the tax imposed which is shown on the return" is not reduced by overstated prepayment credits in computing the amount of an understatement for purposes of the substantial understatement penalty. See § 1.6662-4(b)(4).) The proposed regulations further provide that "the amount shown as the tax by the taxpayer on his return" is increased by any amount of additional tax reported on a qualified amended return, unless the additional tax reported relates to a fraudulent position on the original return.

A qualified amended return is defined by § 1.6664-2(c)(3) for purposes of the accuracy-related penalty as an amended return or timely request for administrative adjustment under section 6227 that is filed before the Service first contacts (i) a taxpayer in connection with an examination of the taxpayer's return, (ii) any person described in section 6700 (relating to promotion of abusive tax shelters) in connection with a tax shelter with respect to which the taxpayer claimed a benefit on the return, or (iii) in the case of a pass-through item (as defined in § 1.6662-4(f)(5)), the pass-through entity in connection with an examination of the return to which the pass-through item relates. An amended return may constitute a qualified amended return for purposes of disclosure even if it reports no additional tax liability.

The proposed regulations also provide that the phrase "amounts not so shown previously assessed" in the definition of underpayment includes only amounts assessed before the return is filed, such as termination and jeopardy assessments made prior to filing. Amounts "collected without assessment" are payments (such as withholding credits or estimated tax payments) made before a return is filed in excess of the tax liability shown on the return, provided such excess has not been refunded or credited to the taxpayer. Amounts "collected without assessment" include refunds claimed on a return that were frozen pending an examination of the return.

The term "rebate" means the amount of an abatement, credit, refund or other repayment that is made on the ground that the tax imposed is less than the excess of (i) the sum of the amount shown as the tax by the taxpayer on his return, plus amounts not so shown previously assessed (or collected without assessment), over (ii) rebates previously made.

The proposed regulations also clarify that an underpayment for a carryback

year that is attributable to conduct proscribed by sections 6662 or 6663 is not reduced on account of the carryback.

In addition, the proposed regulations clarify the definitions of underpayment and understatement by coordinating the definitions of the two terms. Although underpayment (which applies to all portions of the section 6662 accuracy-related penalty and to the section 6663 fraud penalty) and understatement (which is relevant only to the substantial understatement penalty under section 6662(d)) are somewhat similar concepts, there are important differences in the meanings of the two terms. In general, understatement focuses upon the taxpayer's statement of his liability and underpayment focuses upon the amount by which the liability was underpaid. The more significant differences are: (i) As noted above, overstated prepayment credits increase the amount of an underpayment, but have no effect on the calculation of an understatement; (ii) whether a position with respect to an item has substantial authority or is disclosed on a return is relevant to the determination of the amount of an understatement, but not to the determination of the amount of an underpayment; and (iii) the amount of an underpayment is reduced by amounts not shown on the return that have been previously assessed (or collected without assessment), but the amount of an understatement is not.

Ordering Rules

Section 1.6664-3 of the proposed regulations explains how to calculate the total amount of accuracy-related and fraud penalties imposed by sections 6662 and 6663 with respect to a return for a taxable year where (i) there is at least one adjustment on the return with respect to which no penalty has been imposed and at least one adjustment with respect to which a penalty has been imposed, or (ii) there are at least two adjustments with respect to which penalties have been imposed and they have been imposed at different rates. Similar rules are provided for allocating unclaimed prepayment credits to adjustments on a return.

Reasonable Cause and Good Faith Exception

Section 1.6664-4 of the proposed regulations provides rules for the reasonable cause and good faith exception to the accuracy-related penalty. Pursuant to section 6664(c), no penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer

acted in good faith with respect to, such portion.

The determination of whether this exception applies is to be made on a case-by-case basis by taking into account all pertinent facts and circumstances. The most important factor is the extent of the taxpayer's effort to assess his proper tax liability.

In the case of charitable deduction property (*i.e.*, property other than money or marketable securities that is donated to charity and for which a charitable contribution deduction is claimed under section 170), the reasonable cause and good faith exception will not apply unless the value claimed on the return for the property is based on a qualified appraisal of the property by a qualified appraiser. In addition, the taxpayer must make a good faith investigation of the value of the contributed property to avail himself of this exception.

The proposed regulations do not consider how the reasonable cause exception should be applied in the context of transactions between persons described in section 482 or of net section 482 transfer price adjustments.

Special Analyses

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

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely 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 during the week of June 3 through 7, 1991. A notice of the public hearing will be published in the Federal Register in the near future.

Drafting Information

The principal author of these proposed regulations is Gail M. Winkler, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel

from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6654-1 Through 1.6709-1

Additions to tax, Administration and procedure, Income taxes, Penalties.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—[AMENDED]

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

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

Par. 2. The following new §§ 1.6662-0 through 1.6662-5 and 1.6664-0 through 1.6664-4 are added to read as follows:

§ 1.6662-0 Table of contents.

§ 1.6662-1 Overview of the accuracy-related penalty.

§ 1.6662-2 Accuracy-related penalty.

- (a) In general.
- (b) Amount of penalty.
- (1) In general.
- (2) Increase in penalty for gross valuation misstatement.
- (c) No stacking of accuracy-related penalty components.
- (d) Effective date.

§ 1.6662-3 Negligence or disregard of rules or regulations

- (a) In general.
- (b) Definitions and rules.
- (1) Negligence.
- (2) Disregard of rules or regulations.
- (3) Frivolous.
- (c) Exception for adequate disclosure.
- (1) In general.
- (2) Method of disclosure.
- (d) Special rules in the case of carrybacks and carryovers.
- (1) In general.
- (2) Transition rule for carrybacks to pre-1990 years.
- (3) Example.

§ 1.6662-4 Substantial understatement of income tax

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§ 1.6662-5 Substantial and cross valuation misstatements under chapter 1

- (a) In general.
- (b) Dollar limitation.
- (c) Special rules in the case of carrybacks and carryovers.
 - (1) In general.
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- (d) Examples.
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 - (1) Substantial valuation misstatement.
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 - (3) Property.
 - (f) Multiple valuation misstatements on a return.
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 - (g) Property with a value or adjusted basis of zero.
 - (h) Pass-through entities.
 - (1) In general.
 - (2) Example.
 - (i) [Reserved]
 - (j) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
 - (k) Returns affected.

§ 1.6662-1 Overview of the accuracy-related penalty.

Section 6662 imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following:

- (a) Negligence or disregard of rules or regulations;

(b) Any substantial understatement of income tax;

(c) Any substantial valuation misstatement under chapter 1;

(d) Any substantial overstatement of pension liabilities; or

(e) Any substantial estate or gift tax valuation understatement.

Sections 1.6662-1 through 1.6662-5 address only the first three components of the accuracy-related penalty, *i.e.*, the penalties for negligence or disregard of rules or regulations, substantial understatements of income tax, and substantial (or gross) valuation misstatements under chapter 1. The penalties for negligence or disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in § 1.6662-3(c) and § 1.6662-4(e) and (f), respectively. The penalty for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure. No accuracy-related penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy related penalty is set forth in § 1.6664-4.

§ 1.6662-2 Accuracy-related penalty.

(a) *In general.* Section 6662(a) imposes an accuracy-related penalty on any portion of an underpayment of tax (as defined in section 6664(a) and § 1.6664-2) required to be shown on a return if such portion is attributable to one or more of the following types of misconduct:

- (1) Negligence or disregard of rules or regulations (see § 1.6662-3);
- (2) Any substantial understatement of income tax (see § 1.6662-4); or
- (3) Any substantial (or gross) valuation misstatement under chapter 1 (substantial valuation misstatement or gross valuation misstatement), provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied (see § 1.6662-5).

The accuracy-related penalty applies only in cases in which a return of tax is filed, except that the penalty does not apply in the case of a return prepared by the Secretary under the authority of section 6020(b). The accuracy-related penalty under section 6662 and the penalty under section 6651 for failure to timely file a return of tax may both be imposed on the same portion of an underpayment if a return is filed, but is filed late. No accuracy-related penalty may be imposed, however, on any portion of an underpayment of tax on which the fraud

penalty set forth in section 6663 is imposed.

(b) *Amount of penalty—(1) In general.* The amount of the accuracy-related penalty is 20 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to any of the types of misconduct listed in paragraphs (a)(1) through (a)(3) of this section, except as provided in paragraph (b)(2) of this section.

(2) *Increase in penalty for gross valuation misstatement.* In the case of a gross valuation misstatement, as defined in section 6662(h)(2) and § 1.6662-5(e)(2), the amount of the accuracy-related penalty is 40 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to the gross valuation misstatement, provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied.

(c) *No stacking of accuracy-related penalty components.* The maximum accuracy-related penalty imposed on a portion of an underpayment may not exceed 20 percent of such portion (40 percent of the portion attributable to a gross valuation misstatement), notwithstanding that such portion is attributable to more than one of the types of misconduct described in paragraph (a) of this section. For example, if a portion of an underpayment of tax required to be shown on a return is attributable both to negligence and a substantial understatement of income tax, the maximum accuracy-related penalty is 20 percent of such portion. Similarly, the maximum accuracy-related penalty imposed on any portion of an underpayment that is attributable both to negligence and a gross valuation misstatement is 40 percent of such portion.

(d) *Effective date.* Section 2.6662-3(c) and § 1.6662-4(e) and (f) (relating to methods of making adequate disclosure) will apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1991. Sections 1.6662-1 through 1.6662-5 apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1989. To the extent the provisions of these regulations were not reflected in the statute as amended by the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), in Notice 90-20, 1990-1 C.B. 328, or in rules and regulations in effect prior to March 4, 1991 (to the extent not inconsistent with the statute as amended by OBRA 1989), these regulations will not be adversely applied to a taxpayer who took a position based upon such prior rules.

§ 1.6662-3 Negligence or disregard of rules or regulations

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664-2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. This penalty does not apply, however, if a position with respect to an item is not frivolous and is adequately disclosed as provided in § 2.6662-3(c), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664-4 applies. In addition, if a position with respect to an item is contrary to a revenue ruling, this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See § 2.6694-2(b) of the preparer penalty regulations for a description of the realistic possibility standard.

(b) *Definitions and rules—(1) Negligence.* The term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. "Negligence" also includes any failure by the taxpayer to keep proper books and records or to substantiate items properly. A position with respect to an item is attributable to negligence if it is frivolous, or is not frivolous, but lacks a reasonable basis. Negligence is strongly indicated where—

(i) A taxpayer fails to include on an income tax return an amount of income shown on an information return, as defined in section 6724(d)(1).

(ii) A taxpayer fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion on a return which would seem to a reasonable and prudent person to be "too good to be true" under the circumstances.

(iii) A partner fails to comply with the requirements of section 6222, which requires that a partner treat partnership items on its return in a manner that is consistent with the treatment of such items on the partnership return (or notify the Secretary of the inconsistency).

(iv) A shareholder fails to comply with the requirements of section 6242, which requires that an S corporation shareholder treat subchapter S items on its return in a manner that is consistent with the treatment of such items on the corporation's return (or notify the Secretary of the inconsistency).

(2) *Disregard of rules or regulations.* The term "disregard" includes any careless, reckless or intentional disregard of rules or regulations. "Rules or regulations" includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings issued by the Internal Revenue Service. A disregard of rules or regulations is "careless" if the taxpayer does not exercise reasonable diligence to determine the correctness of a return position that is contrary to the rule or regulation. A disregard is "reckless" if the taxpayer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable person would observe. A disregard is "intentional" if the taxpayer knows of the rule or regulation that is disregarded. Nevertheless, a taxpayer who takes a position contrary to a revenue ruling has not disregarded the ruling if the contrary position has a realistic possibility of being sustained on its merits.

(3) *Frivolous.* A "frivolous" position with respect to an item is one that is patently improper.

(c) *Exception for adequate disclosure—(1) In general.* No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to negligence or a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section. This disclosure exception does not apply, however, in the case of a position that is frivolous or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

(2) *Method of disclosure.* Disclosure is adequate for purposes of this section if made in accordance with the provisions of § 1.6662-4(f) (1), (3), (4) and (5), which permit disclosure on a properly completed and filed Form 8275. In the case of a position contrary to a rule or regulation, disclosure is sufficient only if the preceding sentence is satisfied and the statutory or regulatory provision or ruling in question is adequately identified on the Form 8275. The provisions of § 1.6662-4(f)(2), which permit disclosure in accordance with an annual revenue procedure for purposes of the substantial understatement penalty, do not apply for purposes of the penalty for negligence or disregard of rules or regulations.

(d) *Special rules in the case of carrybacks and carryovers—(i) In general.* The penalty for negligence or disregard of rules or regulations applies

to any portion of an underpayment for a year to which a loss, deduction or credit is carried, which portion is attributable to negligence or disregard of rules or regulations in the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year).

(2) *Transition rule for carrybacks to pre-1990 years.* A 20 percent penalty under section 6662(b)(1) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to negligence or disregard of rules or regulations in a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989.

(3) *Example.* The following example illustrates the provisions of paragraph (d) of this section. This example does not take into account the reasonable cause exception under § 1.6664-4.

Example. Corporation M is a C corporation. In 1990, M had a loss of \$200,000 before taking into account a deduction of \$350,000 that M claimed as an expense in careless disregard of the capitalization requirements of section 263 of the Code. M failed to make adequate disclosure of the item on Form 8275 for 1990. M reported a \$550,000 loss for 1990 and carried back the loss to 1987 and 1988. M had reported taxable income of \$400,000 for 1987 and \$200,000 for 1988, before application of the carryback. The carryback eliminated all of M's taxable income for 1987 and \$150,000 of taxable income for 1988. After disallowance of the \$350,000 expense deduction and allowance of a \$35,000 depreciation deduction with respect to the capitalized amount, the correct loss for 1990 was determined to be \$235,000. Because there is no underpayment for 1990, the penalty for negligence or disregard of rules or regulations does not apply for 1990. However, as a result of the 1990 adjustments, the loss carried back to 1987 is reduced from \$550,000 to \$235,000. After application of the \$235,000 carryback, M has taxable income of \$165,000 for 1987 and \$200,000 for 1988. This adjustment results in underpayments for 1987 and 1988 that are attributable to the disregard of rules or regulations on the 1990 return. Therefore, the 20 percent penalty rate applies to the 1987 and 1988 underpayments attributable to the disallowed carryback.

§ 1.6662-4 Substantial understatement of income tax.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664-2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to a substantial understatement of such income tax, there is added to the tax an amount equal to 20 percent of such portion. Except in the case of any item

attributable to a tax shelter (as defined in paragraph (g)(2) of this section), an understatement is reduced by the portion of the understatement that is attributable to the tax treatment of an item for which there is substantial authority, or with respect to which there is adequate disclosure. General rules for determining the amount of an understatement are set forth in paragraph (b) of this section and more specific rules in the case of carrybacks and carryovers are set forth in paragraph (c) of this section. The rules for determining when substantial authority exists are set forth in § 1.6662-4(d). The rules for determining when there is adequate disclosure are set forth in § 1.6662-4(e) and (f). This penalty does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664-4 applies.

(b) *Definitions and computational rules*—(1) *Substantial*. An understatement (as defined in paragraph (b)(2) of this section) is "substantial" if it exceeds the greater of—

(i) 10 percent of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section); or

(ii) \$5,000 (\$10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)).

(2) *Understatement*. Except as provided in paragraph (c) of this section (relating to special rules for carrybacks and carryovers), the term "understatement" means the excess of—

(i) The amount of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section), over

(ii) The amount of the tax imposed which is shown on the return for the taxable year (as defined in paragraph (b)(4) of this section), reduced by any rebate (as defined in paragraph (b)(5) of this section).

The definition of understatement also may be expressed as—Understatement = $X - (Y - Z)$

where X = the amount of the tax required to be shown on the return; Y = the amount of the tax imposed which is shown on the return; and Z = any rebate.

(3) *Amount of the tax required to be shown on the return*. The "amount of the tax required to be shown on the return" for the taxable year has the same meaning as the "amount of income tax imposed" as defined in § 1.6664-2(b).

(4) *Amount of the tax imposed which is shown on the return*. The "amount of

the tax imposed which is shown on the return" for the taxable year has the same meaning as the "amount shown as the tax by the taxpayer on his return," as defined in § 1.6664-2(c), except that—

(i) There is no reduction for the excess of the amount described in § 1.6664-2(c)(1)(i) over the amount described in § 1.6664-2(c)(1)(ii), and

(ii) The tax liability shown by the taxpayer on his return is recomputed as if the following items had been reported properly:

(A) Items (other than tax shelter items as defined in § 1.6662-4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662-4(d)).

(B) Items (other than tax shelter items as defined in § 1.6662-4(g)(3)) with respect to which there is adequate disclosure (as provided in § 1.6662-4 (e) and (f)).

(C) Tax shelter items (as defined in § 1.6662-4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662-4(d)), and with respect to which the taxpayer reasonably believed that the tax treatment of the items was more likely than not the proper tax treatment (as provided in § 1.6662-4(g)(4)).

(5) *Rebate*. The term "rebate" has the meaning set forth in § 1.6664-2(e), except that—

(i) "Amounts not so shown previously assessed (or collected without assessment)" includes only amounts not so shown previously assessed (or collected without assessment) as a deficiency, and

(ii) The amount of the rebate is determined as if any items to which the rebate is attributable that are described in paragraph (b)(4) of this section had received the proper tax treatment.

(6) *Examples*. The following examples illustrate the provisions of paragraph (b) of this section. These examples do not take into account the reasonable cause exception under § 1.6664-4:

Example (1). In 1990, Individual A, a calendar year taxpayer, files a return for 1989, which shows taxable income of \$18,200 and tax liability of \$2,734. Subsequent adjustments on audit for 1989 increase taxable income to \$51,500 and tax liability to \$12,339. There was substantial authority for an item resulting in an adjustment that increases taxable income by \$5,300. The item is not a tax shelter item. In computing the amount of the understatement, the amount of tax shown on A's return is determined as if the item for which there was substantial authority had been given the proper tax treatment. Thus, the amount of tax that is treated as shown on A's return is \$4,176, i.e., the tax on \$23,500 (\$18,200 taxable income actually shown on A's return plus \$5,300, the amount of the adjustment for which there

was substantial authority). The amount of the understatement is \$8,163, i.e., \$12,339 (the amount of tax required to be shown) less \$4,176 (the amount of tax treated as shown on A's return after adjustment for the item for which there was substantial authority). Because the \$8,163 understatement exceeds the greater of 10 percent of the tax required to be shown on the return for the year, i.e., \$1,234 (\$12,339 \times .10) or \$5,000, A has a substantial understatement of income tax for the year.

Example 2. Individual B, a calendar year taxpayer, files a return for 1990 that fails to include income reported on an information return, Form 1099, that was furnished to B. The Service detects this omission through its document matching program and assesses \$3,000 in unreported tax liability. B's return is later examined and as a result of the examination the Service makes an adjustment to B's return of \$4,000 in additional tax liability. Assuming there was neither substantial authority nor adequate disclosure with respect to the items adjusted, there is an understatement of \$7,000 with respect to B's return. There is also an underpayment of \$7,000. (See § 1.6664-2.) The amount of the understatement is not reduced by imposition of a negligence penalty on the \$3,000 portion of the underpayment that is attributable to the unreported income. However, if the Service does impose the negligence penalty on this \$3,000 portion, the Service may only impose the substantial understatement penalty on the remaining \$4,000 portion of the underpayment. (See § 1.6662-2(c), which prohibits stacking of accuracy-related penalty components.)

(c) *Special rules in the case of carrybacks and carryovers*—(1) *Aggregation of understatements in testing for substantiality*. In determining whether an understatement is substantial for a year in which a carryback or carryover of a loss, deduction or credit arises (a loss or credit year), any understatement for a carryback or carryover year that is attributable to a tainted carryback or carryover from the loss or credit year is treated as an understatement with respect to the return of the loss or credit year. An understatement for a carryback or carryover year is considered attributable to a tainted carryback or carryover from a loss or credit year to the extent that the carryback or carryover, as the case may be, is attributable to "tainted items," i.e., in the case of items other than tax-shelter items, items for which there neither was substantial authority nor adequate disclosure, or in the case of tax shelter items, items for which there was not both substantial authority and a reasonable belief that the tax treatment was more likely than not the proper treatment. An understatement for a loss or credit year is substantial, therefore, if the understatement for that year

(determined without regard to aggregation) exceeds, when aggregated with any understatement for a carryback or carryover year that is attributable to a tainted carryback or carryover from the loss or credit year, the greater of 10 percent of the tax required to be shown on the return for the loss or credit year, or \$5,000 (\$10,000 in the case of most corporations). Notwithstanding the aggregating of understatements in testing for substantiality, any underpayment for a carryback or carryover year that is attributable to a substantial understatement with respect to the return of the loss or credit year, is subject to penalty in the carryback or carryover year. (See § 1.6664-2 for the rules for computing an underpayment.) The determination of whether there is substantial authority for, or adequate disclosure with respect to, the tax treatment of a carryback or carryover item is made with respect to the return of the loss or credit year, rather than the

return of the carryback or carryover year.

(2) *Understatements for carryback years not reduced by amount of carrybacks.* The amount of an understatement for a taxable year is not reduced on account of a carryback of a loss, deduction or credit to that year.

(3) *Transition rules—(i) Carrybacks to pre-1990 years.* Any understatement for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to a tainted carryback or carryover from a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989, is treated as an understatement with respect to the return of the loss or credit year. Any underpayment for such a carryback year that is attributable to an understatement for such a loss or credit year is penalized at a 20 percent rate under section 6662(b)(2).

(ii) *Carryovers to post-1989 years.* The determination of whether an

understatement is substantial for a carryover year, the return for which is due (without regard to extensions) after December 31, 1989, is made without treating the understatement for such carryover year as an understatement with respect to the return of the loss or credit year, if the return for such loss or credit year is due (without regard to extensions) before January 1, 1990. Any underpayment for such a carryover year that is attributable to an understatement for such year is penalized at a 20 percent rate under section 6662(b)(2).

(4) *Examples.* The following examples illustrate the special rules of paragraph (c) of this section regarding carrybacks and carryovers. These examples do not take into account the reasonable cause exception under § 1.6664-4.

Example 1. Corporation N, a calendar year taxpayer, is a C corporation. N was formed on January 1, 1987, and timely filed the following income tax returns:

Tax year	1987	1988	1989	1990
Taxable income.....	\$110,000	\$100,000	(\$200,000)	\$110,000 (Before NOLCO).
Tax liability.....	1,500	22,250	-0-	1,500 (Before NOLCO).

During 1990, N files Form 1139, Corporation Application for Tentative Refund, to carry back the NOL generated in 1989 (NOLCB). N received refunds of \$1,500 for 1987 and \$22,250 for 1988.

For tax year 1990, N carries over \$10,000 of the 1989 loss to offset \$10,000 of income earned in 1990 and reduce taxable income to zero. N Would have reported \$1,500 of tax liability for 1990 if it were not for use of the net operating loss carryover (NOLCO). N assumes there is a remaining NOLCO of \$80,000 to be applied for tax year 1991.

In June 1991, the Service completes its examination of the 1989 loss year return and makes the following adjustments:

Taxable income per 1989 return...	(\$200,000)
Adjustment: Unreported income ..	210,000
Corrected taxable income.....	10,000
Corrected tax liability.....	1,500

There was not substantial authority for N's treatment of the items comprising the 1989 adjustments and N did not make adequate disclosure.

The following are deemed to be understatements of tax with respect to the 1989 loss year: (1) \$1,500 for tax year 1987; (2) \$22,250 for tax year 1988; (3) \$1,500 for tax year 1989; and (4) \$1,500 for tax year 1990. These amounts are aggregated to determine if the understatement for 1989 is substantial, i.e., to determine if it exceeds the greater of (a) \$150 (10 percent of the tax required to be shown on the return for taxable year 1989 (.10 X \$1,500)) or (b) \$10,000. The understatement

for 1989 is \$26,750 and, therefore, is substantial. A 20 percent penalty rate will apply in 1987, 1988, 1989 and 1990 to each underpayment in those years, since each such underpayment is attributable to the \$26,750 substantial understatement for 1989.

Example 2. The facts are the same as in Example 1, except that in addition to examining the 1989 return, the Service also examines the 1988 return and makes an adjustment that results in an understatement. (This adjustment is unrelated to the adjustment on the 1988 return for the disallowance of the NOLCB from 1989.) If the understatement resulting from the adjustment is a substantial understatement under former section 6661 (determined without regard to the understatement attributable to the carryback), any underpayment attributable to the understatement is subject to the 25 percent penalty rate under former section 6661. Regardless of whether the adjustment gives rise to a substantial understatement under former section 6661, any underpayment attributable to the \$22,250 understatement for 1988 resulting from the NOLCB from 1989 (see Example 1) is subject to the 20 percent penalty rate under section 6662.

Example 3. The facts are the same as in Example 1, except that in addition to examining the 1989 return, the Service examines the 1990 return. In addition to disallowing the NOLCO from 1989, another adjustment is made for an item for which there was not substantial authority or adequate disclosure:

Tax year 1990: Taxable income per return.....	\$-0-
(1) Increase in income attributable to disallowance of NOLCO.....	10,000
(2) Increase in income attributable to other adjustments.....	5,000
Corrected taxable income.....	15,000
Corrected tax liability.....	2,250
Tax per return.....	-0-
Understatement.....	2,250
Portion of understatement attributable to (1).....	1,500
Portion of understatement attributable to (2).....	750

As explained in Example 1, the understatement resulting from adjustment (1) is treated as an understatement for tax year 1989 and is aggregated with understatements resulting from disallowance of NOLCB's from 1989 and the \$1,500 understatement for 1989 to determine if there is a substantial understatement for 1989. Because the understatement resulting from adjustment (2), standing alone, is not in excess of the greater of 10 percent of the tax required to be shown on the 1990 return (.10 X \$2,250 = \$225), or \$10,000, such understatement is not substantial and will not trigger the substantial understatement penalty for 1990.

Example 4. Corporation W, a calendar year taxpayer, is a C corporation. W was formed on January 1, 1992. W's 1991 tax return shows a net operating loss of \$40,000. W applies the entire \$40,000 loss carryover to its 1992 tax return, resulting in a reduction in taxable

income from \$50,000 to \$10,000. A subsequent examination of the 1991 tax return results in an adjustment of \$70,000 for unreported income. There was not substantial authority for W's failure to report the income, and W did not make adequate disclosure with respect to the unreported income. The adjustment eliminates the 1991 net operating loss of \$40,000, producing an understatement of \$4,500 (the tax on corrected taxable income of \$30,000). As a result of the adjustment to the 1991 return, the loss of \$40,000 carried over to 1992 is disallowed, resulting in an understatement of \$6,000 (the difference between the tax on \$50,000 and the tax on \$10,000). Both the \$4,500 understatement and the \$6,000 understatement are understatements with respect to 1991, and they are aggregated for purposes of determining whether there is a substantial understatement for 1991. The aggregated amount, \$10,500, exceeds the greater of \$10,000 or 10 percent of the tax required to be shown on the 1991 return (.10 X \$4,500 = \$450). Thus, any underpayment attributable to the \$4,500 understatement for 1991 or the \$6,000 understatement for 1992 is subject to the 20 percent penalty rate under section 6662 in each of those years.

Example 5. Individual P, a calendar year single taxpayer, files his 1988 tax return showing a net operating loss of \$25,000. The loss is carried forward rather than carried back. P applies \$10,000 of the loss to his 1989 tax year, reducing his taxable income to zero. The remaining \$15,000 is applied to his 1990 tax return resulting in a reduction in taxable income from \$35,000 to \$20,000. A subsequent examination of the 1988 tax return results in an adjustment for unreported income of \$45,000, thus eliminating the net operating loss of \$25,000 and producing an understatement for 1988 of \$3,237 (the tax on corrected taxable income of \$20,000). As a result of the adjustment to the 1988 return, the loss of \$10,000 carried forward to 1989 is disallowed, resulting in an understatement for 1989 of \$1,504 (tax on \$10,000 taxable income). Also as a result of the adjustment to the 1988 return, the loss of \$15,000 carried forward to 1990 is disallowed, resulting in an understatement for 1990 of \$2,254. Because none of the understatements, standing alone, exceeds \$5,000 (even though, if aggregated, they would exceed \$5,000), there is not a substantial understatement for 1988 under former section 6661, or for 1989 or 1990 under section 6662(d).

(d) *Substantial authority*—(1) *Effect of having substantial authority.* If there is substantial authority for the tax treatment of an item, the item is treated as if it were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to the item is not included in the understatement for that year. (For special rules relating to tax shelter items see § 1.6662-4(g).)

(2) *Substantial authority standard.* The substantial authority standard is an objective standard involving an analysis of the law and application of the law to

relevant facts. The substantial authority standard is less stringent than the "more likely than not" standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard (the standard which, if satisfied, generally will prevent imposition of the penalty under section 6662(b)(1) for negligence or disregard of rules or regulations). A return position that is arguable, but fairly unlikely to prevail in court, satisfies the reasonable basis standard, but not the substantial authority standard. The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.

(3) *Determination of whether substantial authority is present*—(i) *Evaluation of authorities.* There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. The weight of authorities is determined in light of the pertinent facts and circumstances in the manner prescribed by paragraph (d)(3)(ii) of this section. There may be substantial authority for more than one position with respect to the same item. Because the substantial authority standard is an objective standard, the taxpayer's belief that there is substantial authority for the tax treatment of an item is not relevant in determining whether there is substantial authority for that treatment.

(ii) *Nature of analysis.* The weight accorded an authority depends on its relevance and persuasiveness, and the type of document providing the authority. For example, a case or revenue ruling having some facts in common with the tax treatment at issue is not particularly relevant if the authority is materially distinguishable on its facts, or is otherwise inapplicable to the tax treatment at issue. An authority that merely states a conclusion ordinarily is less persuasive than one that reaches its conclusion by cogently relating the applicable law to pertinent facts. The weight of an authority from which information has been deleted, such as a private letter ruling, is diminished to the extent that the deleted information may have affected the authority's conclusions. The type of

document also must be considered. For example, a revenue ruling is accorded greater weight than a private letter ruling addressing the same issue. An older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally must be accorded less weight than a more recent one. Any document described in the preceding sentence that is more than 10 years old generally is accorded very little weight. There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

(iii) *Types of authority.* Except in cases described in paragraph (d)(3)(iv) of this section concerning written determinations, only the following are authority for purposes of determining whether there is substantial authority for the tax treatment of an item: applicable provisions of the Internal Revenue Code and other statutory provisions; proposed, temporary and final regulations construing such statutes; revenue rulings and revenue procedures; tax treaties and regulations thereunder, and Treasury Department and other official explanations of such treaties; Federal court cases interpreting such statutes; congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill's managers; General Explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book); private letter rulings and technical advice memoranda issued after October 31, 1976; actions on decisions and general counsel memoranda issued after March 12, 1981; Internal Revenue Service information or press releases; and notices, announcements and other administrative pronouncements published by the Service in the Internal Revenue Bulletin. Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by other tax professionals are not authority. The authorities underlying such expressions of opinion where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an item. Notwithstanding the preceding list of authorities, an authority does not continue to be an authority once it is overruled or modified, implicitly or explicitly, by an authority of the same or higher source. For example, a district court opinion on

an issue is not an authority if overruled or reversed. Similarly, a private letter ruling is not authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin.

(iv) *Special rules*—(A) *Written determinations*. There is substantial authority for the tax treatment of an item by a taxpayer if the treatment is supported by the conclusion of a ruling or a determination letter (as defined in § 301.6110-2(d) and (e)) issued to the taxpayer, by the conclusion of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior taxable year of the taxpayer ("written determinations"). The preceding sentence does not apply, however, if—

(1) There was a misstatement or omission of a material fact or the facts that subsequently develop are materially different from the facts on which the written determination was based, or

(2) The written determination was modified or revoked after the date of issuance by—

(i) A notice to the taxpayer to whom the written determination was issued,

(ii) The enactment of legislation or ratification of a tax treaty,

(iii) A decision of the United States Supreme Court,

(iv) The issuance of temporary or final regulations, or

(v) The issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin. See section 6404(f) for rules which require the Secretary to abate a penalty that is attributable to erroneous written advice furnished to a taxpayer by an officer or employee of the Internal Revenue Service.

(B) *Taxpayer's jurisdiction*. The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether there is substantial authority for the tax treatment of an item. Notwithstanding the preceding sentence, there is substantial authority for the tax treatment of an item if the treatment is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(C) *When substantial authority determined*. There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is filed or there was substantial authority

on the last day of the taxable year to which the return relates.

(v) *Substantial authority for tax returns due before January 1, 1990*. There is substantial authority for the tax treatment of an item on a return that is due (Without regard to extensions) after December 31, 1982 and before January 1, 1990, if there is substantial authority for such treatment under either the provisions of paragraph (d)(3)(iii) of this section (which set forth an expanded list of authorities) Or of § 1.6662-3(b)(2) (which set forth a narrower list of authorities). Under either list of authorities, authorities both for and against the position must be taken into account.

(e) *Disclosure of certain information*—(1) *Effect of adequate disclosure*. Items for which there is adequate disclosure as provided in this paragraph (e) and in paragraph (f) of this section are treated as if such items were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to such items is not included in the understatement for that year.

(2) *Circumstances where disclosure will not have an effect*. The rules of paragraph (e)(1) of this section do not apply where the item or position on the return is—

(i) Frivolous (as defined in § 1.6662-3(b)(3));

(ii) Attributable to a tax shelter (as defined in section 6662(d)(2)(C)(ii) and paragraph (g)(2) of this section); or

(iii) Not properly substantiated, or the taxpayer failed to keep proper books and records with respect to the item or position.

(f) *Method of making adequate disclosure*—(1) *Disclosure statement*. Disclosure is adequate with respect to an item (or group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business) or a position on a return if the disclosure is made on a properly completed Form 8275 (Disclosure Statement) attached to the return or to a qualified amended return (as defined in § 1.6664-2(c)(3)) for the taxable year.

(2) *Disclosure on return*. The Commissioner may by annual revenue procedure (or otherwise) prescribe the circumstances under which disclosure of information on a return (or qualified amended return) in accordance with applicable forms and instructions is adequate. If the revenue procedure does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form

8275 attached to the return for the year or to a qualified amended return.

(3) *Recurring item*. Disclosure with respect to a recurring item, such as the basis of recovery property, must be made for each taxable year in which the item is taken into account.

(4) *Carrybacks and carryovers*. Disclosure is adequate with respect to any loss, deduction or credit that is carried to another year only if made in connection with the return (or qualified amended return) for the taxable year in which the carryback or carryover arises (the loss or credit year). Disclosure is not also required in connection with the return for the taxable year in which the carryback or carryover is taken into account.

(5) *Pass-through entities*. Disclosure in the case of items attributable to a pass-through entity (pass-through items) is made with respect to the return of the entity, except as provided in this paragraph (f)(5). Thus, disclosure in the case of pass-through items must be made on a Form 8275 attached to the return (or qualified amended return) of the entity, or on the entity's return in accordance with the revenue procedure described in paragraph (f)(2) of this section, if applicable. A taxpayer (*i.e.*, partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) also may make adequate disclosure with respect to a pass-through item, however, if the taxpayer files a properly completed Form 8275 (which includes completion of Part III, Information About Pass-Through Entity) in duplicate, one copy attached to the taxpayer's return (or qualified amended return) and the other copy filed with the Internal Revenue Service Center with which the return of the entity is required to be filed. Each Form 8275 filed by the taxpayer should relate to the pass-through items of only one entity. For purposes of this paragraph (f)(5), a pass-through entity is a partnership, S corporation (as defined in section 1361(a)(1)), estate, trust, regulated investment company (as defined in section 851(a)), real estate investment trust (as defined in section 856(a)), or real estate mortgage investment conduit (REMIC) (as defined in section 860D(a)).

(g) *Items relating to tax shelters*—(1) *In general*. Tax shelter items (as defined in paragraph (g)(3) of this section) are treated as if such items were shown properly on the return for a taxable year in computing the amount of the tax shown on the return, and thus the tax attributable to such items is not included in the understatement for the year, if—

(i) There is substantial authority (as provided in paragraph (d) of this section) for the tax treatment of that item; and

(ii) The taxpayer reasonably believed at the time the return was filed that the tax treatment of that item was more likely than not the proper treatment (see paragraph (g)(4) of this section).

Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

(2) *Tax shelter*—(i) *In general.* For purposes of section 6662(d), the term "tax shelter" means—

(A) A partnership or other entity (such as a corporation or trust),

(B) An investment plan or arrangement, or

(C) Any other plan or arrangement if the principal purpose of the entity, plan or arrangement, based on objective evidence, is to avoid or evade Federal income tax. The principal purpose of an entity, plan or arrangement is to avoid or evade Federal income tax if that purpose exceeds any other purpose.

Typical of tax shelters are transactions structured with little or no motive for the realization of economic gain, and transactions that utilize the mismatching of income and deductions, overvalued assets or assets with values subject to substantial uncertainty, certain nonrecourse financing, financing techniques that do not conform to standard commercial business practices, or the mischaracterization of the substance of the transaction. The existence of economic substance does not of itself establish that a transaction is not a tax shelter if the transaction includes other characteristics that indicate it is a tax shelter.

(ii) *Principal purpose.* The principal purpose of an entity, plan or arrangement is not to avoid or evade Federal income tax if the entity, plan or arrangement has as its purpose the claiming of exclusions from income, accelerated deductions or other tax benefits in a manner consistent with the statute and Congressional purpose. For example, an entity, plan or arrangement does not have as its principal purpose the avoidance or evasion of Federal income tax solely as a result of the following uses of tax benefits provided by the Internal Revenue Code: the purchasing or holding of an obligation bearing interest that is excluded from gross income under section 103; taking an accelerated depreciation allowance under section 168; taking the percentage depletion allowance under section 623 or section 613A; deducting intangible drilling and development costs as expenses under section 263(c);

establishing a qualified retirement plan under sections 401-409; claiming the possession tax credit under section 936; or claiming tax benefits available by reason of an election under section 992 to be taxed as a domestic international sales corporation (DISC), under section 927(f)(1) to be taxed as a foreign sales corporation (FSC), or under section 1362 to be taxed as an S corporation.

(3) *Tax shelter item.* An item of income, gain, loss, deduction or credit is a "tax shelter item" if the item is directly or indirectly attributable to the principal purpose of a tax shelter to avoid or evade Federal income tax. Thus, if a partnership is established for the principal purpose of avoiding or evading Federal income tax by acquiring and overstating the basis of property for purposes of claiming accelerated depreciation, the depreciation with respect to the property is a tax shelter item. However, a deduction claimed in connection with a separate transaction carried on by the same partnership is not a tax shelter item if the transaction does not constitute a plan or arrangement the principal purpose of which is to avoid or evade tax.

(4) *Reasonable belief.* For purposes of section 6662(d), a taxpayer is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if—

(i) The taxpayer analyzes the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and, in reliance upon that analysis, reasonably concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(ii) The taxpayer in good faith relies on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.

(5) *Pass-through entities.* In the case of tax shelter items attributable to a pass-through entity, the actions described in paragraphs (g)(4)(i) and (g)(4)(ii) of this section, if taken by the entity, are deemed to have been taken by the taxpayer and are considered in determining whether the taxpayer reasonably believed that the tax treatment of an item was more likely than not the proper tax treatment.

§ 1.6662-5 Substantial and gross valuation misstatements under chapter 1.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 2.6664-2, of any income tax imposed under chapter 1 of subtitle A of the Code that is required to be shown on a return is attributable to a substantial valuation misstatement under chapter 1 (substantial valuation misstatement), there is added to the tax an amount equal to 20 percent of such portion. Section 6662(h) increases the penalty to 40 percent in the case of a gross valuation misstatement under chapter 1 (gross valuation misstatement). No penalty under section 6662(b)(3) is imposed, however, on a portion of an underpayment that is attributable to a substantial or gross valuation misstatement unless the aggregate of all portions of the underpayment attributable to substantial or gross valuation misstatements exceeds the applicable dollar limitation (\$5,000 or \$10,000), as provided in section 6662(e)(2) and paragraphs (b) and (f)(2) of this section. This penalty also does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664-4 applies. There is no disclosure exception to this penalty.

(b) *Dollar limitation.* No penalty may be imposed under section 6662(b)(3) for a taxable year unless the portion of the underpayment for that year that is attributable to substantial or gross valuation misstatements exceeds \$5,000 (\$10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)). This limitation is applied separately to each taxable year for which there is a substantial or gross valuation misstatement.

(c) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for a substantial or gross valuation misstatement applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year), provided that the applicable dollar limitation set forth in section 6662(e)(2) is satisfied in the carryback or carryover year.

(2) *Transition rule for carrybacks to pre-1990 years.* The penalty under section 6662(b)(3) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions)

before January 1, 1990, that is attributable to a substantial or gross valuation misstatement for a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989, provided the underpayment for the carryback year exceeds the applicable dollar limitation (\$5,000, or \$10,000 for most corporations). See *Example 3* in paragraph (d) of this section.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section. These examples do not take into account the reasonable cause exception under § 1.6664-4.

Example 1. Corporation Q is a C corporation. In 1990, the first year of its existence, Q had taxable income of \$200,000 without considering depreciation of a particular asset. On its calendar year 1990 return, Q overstated its basis in this asset by an amount that caused a substantial valuation misstatement. The overstated basis resulted in depreciation claimed of \$350,000, which was \$250,000 more than the \$100,000 allowable. Thus, on its 1990 return, Q showed a loss of \$150,000. In 1991, Q had taxable income of \$450,000 before application of the loss carryover, and Q claimed a carryover loss deduction under section 172 of \$150,000, resulting in taxable income of \$300,000 for 1991. Upon audit of the 1990 return, the basis of the asset was corrected, resulting in an adjustment of \$250,000. For 1990, the underpayment resulting from the \$100,000 taxable income [$-\$150,000 + \$250,000$] is attributable to the valuation misstatement. Assuming the underpayment resulting from the \$100,000 taxable income exceeds the \$10,000 limitation, the penalty will be imposed in 1990. For 1991, the elimination of the loss carryover results in additional taxable income of \$150,000. The underpayment for 1991 resulting from that adjustment is also attributable to the substantial valuation misstatement on the 1990 return. Assuming the underpayment resulting from the \$150,000 additional taxable income for 1991 exceeds the \$10,000 limitation, the substantial valuation misstatement penalty also will be imposed for that year.

Example 2. Corporation T is a C corporation. In 1990, the first year of its existence, T had a loss of \$3,000,000 without considering depreciation of its major asset. On its calendar year 1990 return, T overstated its basis in this asset in an amount that caused a substantial valuation misstatement. This overstatement resulted in depreciation claimed of \$3,500,000, which was \$2,500,000 more than the \$1,000,000 allowable. Thus, on its 1990 return, T showed a loss of \$8,500,000. In 1991, T had taxable income of \$4,500,000 before application of the carryover loss, but claimed a carryover loss deduction under section 172 in the amount of \$4,500,000, resulting in taxable income of zero for that year and leaving a \$2,000,000 carryover available. Upon audit of the 1990 return, the basis of the asset was corrected,

resulting in an adjustment of \$2,500,000.

For 1990, the underpayment is still zero [$-\$6,500,000 + \$2,500,000 = -\$4,000,000$]. Thus, the penalty does not apply in 1990. The loss for 1990 is reduced to \$4,000,000.

For 1991, there is additional taxable income of \$500,000 as a result of the reduction of the carryover loss (\$4,500,000 reported income before carryover loss minus corrected carryover loss of \$4,000,000 = \$500,000). The underpayment for 1991 resulting from reduction of the carryover loss is attributable to the valuation misstatement on the 1990 return. Assuming the underpayment resulting from the \$500,000 additional taxable income exceeds the \$10,000 limitation, the substantial valuation misstatement penalty will be imposed in 1991.

Example 3. Corporation V is a C corporation. In 1990, V had a loss of \$100,000 without considering depreciation of a particular asset which it had fully depreciated in earlier years. V had a depreciable basis in the asset of zero, but on its 1990 calendar year return erroneously claimed a basis in the asset of \$1,250,000 and depreciation of \$250,000. V reported a \$350,000 loss for the year 1990, and carried back the loss to the 1987 and 1988 tax years. V had reported taxable income of \$300,000 in 1987 and \$200,000 in 1988, before application of the carryback. The \$350,000 carryback eliminated all taxable income for 1987, and \$50,000 of the taxable income for 1988. After disallowance of the \$250,000 depreciation deduction for 1990, V still had a loss of \$100,000. Because there is no underpayment for 1990, no valuation misstatement penalty is imposed for 1990. However, as a result of the 1990 depreciation adjustment, the carryback to 1987 is reduced from \$350,000 to \$100,000. After absorption of the \$100,000 carryback, V has taxable income of \$200,000 for 1987. This adjustment results in an underpayment for 1987 that is attributable to the valuation misstatement on the 1990 return. The valuation misstatement for 1990 is a gross valuation misstatement because the correct adjusted basis of the depreciated asset was zero. (See paragraph (e)(2) of this section.) Therefore, the 40 percent penalty rate applies to the 1987 underpayment attributable to the 1990 misstatement, provided that this underpayment exceeds \$10,000. The adjustment also results in the elimination of any loss carryback to 1988 resulting in an increase in taxable income for 1988 of \$50,000. Assuming the underpayment resulting from this additional \$50,000 of income exceeds \$10,000, the gross valuation misstatement penalty is imposed on the underpayment for 1988.

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 200 percent or more of the correct amount.

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if the value or adjusted basis of any property claimed on a return of tax

imposed under chapter 1 is 400 percent or more of the correct amount.

(3) *Property.* For purposes of this section, the term "property" refers to both tangible and intangible property. Tangible property includes property such as land, buildings, fixtures and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts and choses in action.

(f) *Multiple valuation misstatements on a return*—(1) *Determination of whether valuation misstatements are substantial or gross.* The determination of whether there is a substantial or gross valuation misstatement on a return is made on a property-by-property basis. Assume, for example, that property A has a value of 60 but a taxpayer claims a value of 110, and that property B has a value of 40 but the taxpayer claims a value of 100. Because the claimed and correct values are compared on a property-by-property basis, there is a substantial valuation misstatement with respect to property B, but not with respect to property A, even though the claimed values (210) are 200 percent or more of the correct values (100) when compared on an aggregate basis.

(2) *Application of dollar limitation.* For purposes of applying the dollar limitation set forth in section 6662(e)(2), the determination of the portion of an underpayment that is attributable to a substantial or gross valuation misstatement is made by aggregating all portions of the underpayment attributable to substantial or gross valuation misstatements. Assume, for example, that the value claimed for property C on a return is 250 percent of the correct value, and that the value claimed for property D on the return is 400 percent of the correct value. Because the portions of an underpayment that are attributable to a substantial or gross valuation misstatement on a return are aggregated in applying the dollar limitation, the dollar limitation is satisfied if the portion of the underpayment that is attributable to the misstatement of the value of property C, when aggregated with the portion of the underpayment that is attributable to the misstatement of the value of property D, exceeds \$5,000 (\$10,000 in the case of most corporations).

(g) *Property with a value or adjusted basis of zero.* The value or adjusted basis claimed on a return of any property with a correct value or adjusted basis of zero is considered to be 400 percent or more of the correct amount. There is a gross valuation

misstatement with respect to such property, therefore, and the applicable penalty rate is 40 percent.

(h) *Pass-through entities*—(1) *In general.* The determination of whether there is a substantial or gross valuation misstatement in the case of a return of a pass-through entity (as defined in § 1.6662-4(f)(5)) is made at the entity level. However, the dollar limitation (\$5,000 or \$10,000, as the case may be) is applied at the taxpayer level (*i.e.*, with respect to the return of the shareholder, partner, beneficiary, or holder of a residual interest in a REMIC).

(2) *Example.* The rules of paragraph (h)(1) of this section may be illustrated by the following example.

Example. Partnership P has two partners, individuals A and B. P claims a \$40,000 basis in a depreciable asset which, in fact, has a basis of \$15,000. The determination that there is a substantial valuation misstatement is made solely with reference to P by comparing the \$40,000 basis claimed by P with P's correct basis of \$15,000. However, the determination of whether the \$5,000 threshold for application of the penalty has been reached is made separately for each partner. With respect to partner A, the penalty will apply if the portion of A's underpayment attributable to the passthrough of the depreciation deduction, when aggregated with any other portions of A's underpayment also attributable to substantial or gross valuation misstatements, exceeds \$5,000 (assuming there is not reasonable cause for the misstatements (see § 1.6664-4(c)).

(i) [Reserved]

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.*

[Reserved]

(k) *Returns affected.* Except in the case of rules relating to transactions between persons described in section 482 and net section 482 transfer price adjustments, the provisions of section 6662(b)(3) apply to returns due (without regard to extensions of time to file) after December 31, 1989, notwithstanding that the original substantial or gross valuation misstatement occurred on a return that was due (without regard to extensions) before January 1, 1990. Assume, for example, that a calendar year corporation claimed a deduction on its 1990 return for depreciation of an asset with a basis of X. Also assume that it had reported the same basis for computing depreciation on its returns for the preceding 5 years and that the basis shown on the return each year was 200 percent or more of the correct basis. The corporation may be subject to a penalty for substantial valuation misstatements on its 1989 and 1990 returns, even though the original misstatement occurred prior to the effective date of sections 6662(b)(3) and (e).

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§ 1.6664-1 *Accuracy-related and fraud penalties; definitions and special rules.*

(a) *In general.* Section 6664(a) defines the term "underpayment" for purposes of the accuracy-related penalty under section 6662 and the fraud penalty under section 6663. The definition of "underpayment" of income taxes imposed under subtitle A is set forth in § 1.6664-2. Ordering rules for computing the total amount of accuracy-related and fraud penalties imposed with respect to a return are set forth in § 1.6664-3. Section 6664(c) provides a reasonable cause and good faith exception to the accuracy-related penalty. Rules relating to the reasonable cause and good faith exception are set forth in § 1.6664-4.

(b) *Effective date.* Sections 1.6664-1 through 1.6664-4 apply to returns the due date of which (determined without regard to extensions of time to file) is after December 31, 1989.

§ 1.6664-2 Underpayment.

(a) *Underpayment defined.* In the case of income taxes imposed under subtitle A, an underpayment for purposes of section 6662, relating to the accuracy-related penalty, and section 6663, relating to the fraud penalty, means the amount by which any income tax imposed under this subtitle (as defined in paragraph (b) of the section) exceeds the excess of—

- (1) The sum of—
 - (i) The amount shown as the tax by the taxpayer on his return (as defined in paragraph (c) of this section), plus
 - (ii) Amounts not so shown previously assessed (or collected without assessment) (as defined in paragraph (d) of this section), over
- (2) The amount of rebates made (as defined in paragraph (e) of this section).

The definition of underpayment also may be expressed as—

$Underpayment = W - (X + Y - Z)$,
where W = the amount of income tax imposed; Y = the amount shown as the tax by the taxpayer on his return; Y = amounts not so shown previously assessed (or collected without assessment); and Z = the amount of rebates made.

(b) *Amount of income tax imposed.* For purposes of paragraph (1) of this section, the "amount of income tax imposed" is the amount of tax imposed on the taxpayer under subtitle A for the taxable year, determined without regard to—

- (1) The credits for tax withheld under sections 31 (relating to tax withheld on wages) and 33 (relating to tax withheld at source on nonresident aliens and foreign corporations);
- (2) Payments of tax or estimated tax by the taxpayer;
- (3) Any credit resulting from the collection of amounts assessed under section 6851 as the result of a termination assessment, or section 6861 as the result of a jeopardy assessment; and

(4) Any tax that the taxpayer is not required to assess on the return (such as the tax imposed by section 531 on the accumulated taxable income of a corporation).

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (a) of this section, the "amount shown as the tax by the taxpayer on his return" is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in § 1.6664-2(b) (1), (2), and (3), except that it is reduced by the excess of—

- (i) The amounts shown by the taxpayer on his return as credits for tax

withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The "amount shown as the tax by the taxpayer on his return" includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined.* A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(i) The time the taxpayer is first contacted by the Internal Revenue Service concerning an examination of the return;

(ii) The time any person described in section 6700(a) (relating to the penalty for promoting abusive tax shelters) is first contacted by the Internal Revenue Service concerning an examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A); or

(iii) In the case of a pass-through item (as defined in § 1.6662-4(f)(5)), the time the pass-through entity (as defined in § 1.6662-4(f)(5)) is first contacted by the Internal Revenue Service in connection with an examination of the return to which the pass-through item relates.

A qualified amended return includes an amended return that is filed solely to disclose information pursuant to § 1.6662-3(c)(2) or § 1.6662-4 (e) and (f) and that does not report any additional tax liability.

(4) *Special rule for qualified amended returns.* The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(d) *Amounts not so shown previously assessed (or collected without assessment).* For purposes of paragraph

(a) of this section, "amounts not so shown previously assessed" means only amounts assessed before the return is filed that were not shown on the return, such as termination assessments under section 6851 and jeopardy assessments under section 6861 made prior to the filing of the return for the taxable year. For purposes of paragraph (a) of this section, the amount "collected without assessment" is the amount by which the total of the credits allowable under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), estimated tax payments, and other payments in satisfaction of tax liability made before the return is filed, exceed the tax shown on the return (provided such excess has not been refunded or allowed as a credit to the taxpayer).

(e) *Rebates.* The term "rebate" means so much of an abatement credit, refund or other repayment, as was made on the ground that the tax imposed was less than the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return, plus

(ii) Amounts not so shown previously assessed (or collected without assessment), over

(2) Rebates previously made.

(f) *Underpayments for certain carryback years not reduced by amount of carrybacks.* The amount of an underpayment for a taxable year that is attributable to conduct proscribed by sections 6662 or 6663 is not reduced on account of a carryback of a loss, deduction or credit to that year. Such conduct includes negligence or disregard of rules or regulations; a substantial understatement of income tax; and a substantial (or gross) valuation misstatement under chapter 1, provided that the applicable dollar limitation is satisfied for the carryback year.

(g) *Examples.* The following examples illustrate this section.

Example 1. Taxpayer's 1990 return showed a tax liability of \$18,000. Taxpayer had no amounts previously assessed (or collected without assessment) and received no rebates of tax. Taxpayer claimed a credit in the amount of \$23,000 for income tax withheld under section 3402, which resulted in a refund received of \$5,000. It is later determined that the taxpayer should have reported additional income and that the correct tax for the taxable year is \$25,500. There is an underpayment of \$7,500, determined as follows:

Tax imposed under subtitle A	\$25,500
Tax shown on return	\$18,000
Tax previously assessed (or collected without assessment)	None

Amount of rebates made	None
Balance	\$18,000
Underpayment	7,500

Example 2. The facts are the same as in *Example 1* except that the taxpayer failed to claim on the return a credit of \$1,500 for income tax withheld. This \$1,500 constitutes an amount collected without assessment as defined in paragraph (d) of this section. The underpayment is \$6,000, determined as follows:

Tax imposed under subtitle A	\$25,500
Tax shown on return	18,000
Tax previously assessed (or collected without assessment)	1,500
Amount of rebates made	None
Balance	19,500
Underpayment	6,000

Example 3. On Form 1040 filed for tax year 1990, taxpayer reported a tax liability of \$10,000, estimated tax payments of \$15,000, and received a refund of \$5,000. Estimated tax payments actually made with respect to tax year 1990 were only \$7,000. For purposes of determining the amount of underpayment subject to a penalty under section 6662 or section 6663, the tax shown on the return is \$2,000 (reported tax liability of \$10,000 reduced by the overstated estimated tax of \$8,000 [\$15,000—\$7,000]). The underpayment is \$8,000, determined as follows:

Tax imposed under subtitle A	\$10,000
Tax shown on return	2,000
Tax previously assessed (or collected without assessment)	None
Amount of rebates made	None
Balance	2,000
Underpayment	8,000

§ 1.6664-3 Ordering rules for determining the total amount of penalties imposed.

(a) In general. This section provides rules for determining the order in which adjustments to a return are taken into account for the purpose of computing the total amount of penalties imposed under sections 6662 and 6663, where

(1) There is at least one adjustment with respect to which no penalty has been imposed and at least one with respect to which a penalty has been imposed, or

(2) There are at least two adjustments with respect to which penalties have been imposed and they have been imposed at different rates.

This section also provides rules for allocating unclaimed prepayment credits to adjustments to a return.

(b) *Order in which adjustments are taken into account.* In computing the portions of an underpayment subject to

penalties imposed under sections 6662 and 6663, adjustments to a return are considered made in the following order—

(1) Those with respect to which no penalties have been imposed.

(2) Those with respect to which a penalty has been imposed at a 20 percent rate (*i.e.*, a penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, or substantial valuation misstatement, under sections 6662(b)(1) through 6662(b)(3), respectively).

(3) Those with respect to which a penalty has been imposed at a 40 percent rate (*i.e.*, a penalty for a gross valuation misstatement under sections 6662 (b)(3) and (h)).

(4) Those with respect to which a penalty has been imposed at a 75 percent rate (*i.e.*, a penalty for fraud under section 6663).

(c) *Manner in which unclaimed prepayment credits are allocated.* Any income tax withholding or other payment made before a return was filed, that was neither claimed on the return nor previously allowed as a credit against the tax liability for the taxable year (an unclaimed prepayment credit), is allocated as follows—

(1) If an unclaimed prepayment credit is allocable to a particular adjustment, such credit is applied in full in determining the amount of the underpayment resulting from such adjustment.

(2) If an unclaimed prepayment credit is not allocable to a particular adjustment, such credit is applied in accordance with the ordering rules set forth in paragraph (b) of this section.

(d) *Examples.* The following examples illustrate the rules of this § 1.6664-3. These examples do not take into account the reasonable cause exception to the accuracy-related penalty under § 1.6664-4.

Example 1. A and B, husband and wife, filed a joint federal income tax return for calendar year 1989, reporting taxable income of \$15,800 and a tax liability of \$2,374. A and B had no amounts previously assessed (or collected without assessment) and no rebates had been made. Subsequently, the return was examined and the following adjustments and penalties were agreed to:

Adjustment #1 (No penalty imposed).....	\$1,000
Adjustment #2 (Substantial understatement penalty imposed)....	40,000
Adjustment #3 (Civil fraud penalty imposed).....	45,000
Total adjustments	\$86,000

Taxable income shown on return	15,800
Taxable income as corrected.....	\$101,800
Computation of underpayment:	
Tax imposed by subtitle A	\$25,828
Tax shown on return.....	\$2,374
Previous assessments.....	None
Rebates.....	None
Balance.....	\$2,374
Underpayment	\$23,454

Computation of the portions of the underpayment on which penalties under section 6662(b)(2) and section 6663 are imposed:

Step 1 Determine the portion, if any, of the underpayment on which no accuracy-related or fraud penalty is imposed:

Taxable income shown on return	\$15,800
Adjustment #1.....	1,000
"Adjusted" taxable income	\$16,800
Tax on "adjusted" taxable income..	\$2,524
Tax shown on return.....	2,374
Portion of underpayment on which no penalty is imposed	\$150

Step 2 Determine the portion, if any, of the underpayment on which a penalty of 20 percent is imposed:

"Adjusted" taxable income from step 1.....	\$16,800
Adjustment #2.....	40,000
"Adjusted" taxable income	\$56,800
Tax on "adjusted" taxable income..	\$11,880
Tax on "adjusted" taxable income from step 1.....	2,524
Portion of underpayment on which 20 percent penalty is imposed.....	\$9,356

Step 3 Determine the portion, if any, of the underpayment on which a penalty of 75 percent is imposed:

Total underpayment	\$23,454
Less the sum of the portions of such underpayment determined in:.....	
Step 1.....	\$150
Step 2.....	\$9,356
Total.....	\$9,506
Portion of underpayment on which 75 percent penalty is imposed.....	\$13,948

Example 2. The facts are the same as in *Example 1* except that the taxpayers failed to claim on their return a credit of \$1,500 for income tax withheld on unreported additional income that resulted in Adjustment #2. Because the unclaimed prepayment credit is allocable to Adjustment #2, the portion of the underpayment attributable to that adjustment is \$7,856 (\$9,356-\$1,500). The portions of the

underpayment attributable to Adjustments #1 and #3 remain the same.

Example 3. The facts are the same as in *Example 1* except that the taxpayers made a timely estimated tax payment of \$1,500 for 1989 which they failed to claim (and which the Service had not previously allowed). This unclaimed prepayment credit is not allocable to any particular adjustment. Therefore, the credit is allocated first to the portion of the underpayment on which no penalty is imposed (\$150). The remaining amount (\$1,350) is allocated next to the 20 percent penalty portion of the underpayment (\$9,356). Thus, the portion of the underpayment that is not penalized is zero (\$150-\$150), the portion subject to a 20 percent penalty is \$8,006 (\$9,356-\$1,350) and the portion subject to a 75 percent penalty is unchanged at \$13,948.

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

(a) *In general.* No penalty may be imposed under section 6662 with respect to any portion of an underpayment upon a showing by the taxpayer that there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. Rules for determining whether the reasonable cause and good faith exception applies are set forth in paragraphs (b), (c), (d) and (e) of this section.

(b) *Facts and circumstances taken into account—(1) In General.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the advice of a professional (such as an appraiser, attorney or accountant) does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. For example, reliance on erroneous information (such as an error relating to the cost or adjusted basis of property, the date property was placed in service,

or the amount of opening or closing inventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal controls and procedures, reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the value of property. Other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the activity in which the property is used. (See paragraph (e) of this section for special rules relating to appraisals for "charitable deduction property.") A taxpayer's reliance on erroneous information reported on a Form W-2, Form 1099 or other information return indicates reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section.

Example 1. A, an individual calendar year taxpayer, engages B, a tax professional, to give him advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Under these facts, A is considered to have demonstrated good faith by seeking the advice of a tax professional, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that he knew, or should have known, lacked knowledge in federal income taxation, A would not be considered to have shown reasonable cause or to have acted in good faith.

Example 2. C, an individual, sought advice from D, a friend who was not a tax professional, as to how C might reduce his

Federal tax obligations. D advised C that, for a nominal investment in Corporation X, D had received certain tax benefits which virtually eliminated D's Federal tax liability. D also named other investors who had received similar benefits. Without further inquiry, C invested in X and claimed the benefits that he had been assured by D were due him. In this case, C did not make any good faith attempt to ascertain the correctness of what D had advised him concerning his tax matters, and is not considered to have reasonable cause for the underpayment attributable to the benefits claimed.

Example 3. E, an individual, worked for Company X doing odd jobs and filling in for other employees when necessary. E worked irregular hours and was paid by the hour. The amount of E's pay check differed from week to week. The Form W-2 furnished to E reflected wages for 1990 in the amount of \$29,729. It did not, however, include compensation of \$1,467 paid for some hours E worked. Relying on the Form W-2, E filed a return reporting wages of \$29,729. E had no reason to know that the amount reported on the Form W-2 was incorrect. Under the circumstances, E is considered to have acted in good faith in relying on the Form W-2 and to have reasonable cause for the underpayment attributable to the unreported wages.

Example 4. H, an individual, did not enjoy preparing his tax returns and procrastinated in doing so until April 15th. On April 15th, H hurriedly gathered together his tax records and materials, prepared a return, and mailed it before midnight. The return contained numerous errors, some of which were in H's favor and some of which were not. The net result of all the adjustments, however, was an underpayment of tax by H. Under these circumstances, H is not considered to have reasonable cause for the underpayment or to have acted in good faith in attempting to file an accurate return.

(c) *Pass-through items.* In the case of an underpayment that is related to an item on the return of a pass-through entity (as defined in § 1.6662-4(f)(5)), reasonable cause and good faith by the entity generally is imputed to the taxpayer that has the underpayment. Reasonable cause and good faith is not imputed from the entity to the taxpayer, however, if there are factors which indicate that the taxpayer did not act with reasonable cause and in good faith. Correspondingly, a lack of reasonable cause or bad faith also may be imputed from the entity to the taxpayer.

(d) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.*
[Reserved]

(e) *Valuation misstatements of charitable deduction property—(1) In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction

property (as defined in paragraph (e)(2)(i) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (e)(2)(ii) of this section) by a qualified appraiser (as defined in paragraph (e)(2)(iii) of this section), and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

The rules of this paragraph (e) apply regardless of whether § 1.170A-13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (e) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

(2) *Definitions—(i) Charitable deduction property.* For purposes of this paragraph (e), the term "charitable deduction property" means any property (other than money or publicly traded securities, as defined in § 1.170A-13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

(ii) *Qualified appraisal.* For purposes of this paragraph (e) the term "qualified appraisal" means a qualified appraisal as defined in § 1.170A-13(c)(3).

(iii) *Qualified appraiser.* For purposes of this paragraph (e) the term "qualified appraiser" means a qualified appraiser as defined in § 1.170A-13(c)(5).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

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26 CFR Part 1

[IA-38-90]

RIN 1545-A082

Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to persons who prepare for compensation income tax returns and claims for refund. Changes to the applicable tax law were made by the Omnibus Budget Reconciliation Act of 1989. The regulations would provide the guidance needed to comply with the law.

DATES: Written comments must be received by May 15, 1991. The Service intends to hold a public hearing on these proposed regulations during the week of June 3 through June 7, 1991. Persons wishing to speak at this hearing must deliver outlines of their comments by May 15, 1991. A notice of public hearing will be published in the Federal Register in the near future.

ADDRESSES: Send comments to: Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attn: CC:CORP:T:R (IA-38-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Lisa J. Byun of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.6694-2(c) and § 1.6694-3(e). This information is required by the Internal Revenue Service where an income tax return preparer chooses to avail himself of the disclosure rules provided in § 1.6694-2(c) and § 1.6694-3(e).

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 50,000 hours. The estimated average annual burden per respondent is .5 hours.

Estimated number of respondents: 100,000.

Estimated annual frequency of responses: 2.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules under section 6694 of the Internal Revenue Code of 1986 (Code), as revised by sections 7732 and 7737 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Pub. L. No. 101-239; 103 Stat. 2106).

Explanation of Provisions

OBRA 1989 made changes to section 6694 of the Code, which imposes a penalty on income tax return preparers if there is an understatement of tax liability on a return or claim for refund prepared by the preparer. The proposed regulations provide guidance with respect to these changes. As a result of the 1989 changes, it has become necessary to refine the definition of "income tax return preparer" for purposes of section 6694. As under prior law, the term is generally defined in accordance with section 7701(a)(36) and § 301.7701-15. The proposed regulations provide, however, that solely for purposes of section 6694, no more than one individual associated with a firm (for example, as a partner or employee) will be a preparer with respect to the same return or claim for refund. Thus, if an individual who signs a return or claim for refund (signing preparer) is associated with a firm, that individual, and no other individual associated with the firm will be a preparer for purposes of section 6694. If an individual (other than an individual who is associated with the same firm as the signing preparer) provides advice to the taxpayer or to another preparer in connection with a return or claim for refund (nonsigning preparer), that individual (and no other individual associated with the nonsigning preparer's firm) will be considered a preparer for purposes of section 6694. Where more than one individual associated with a firm is involved in providing advice, the individual with direct supervisory responsibility for the matter is the individual who will ordinarily be subject to the penalty as a nonsigning preparer.

This "one-preparer-per-firm" rule eliminates the administrative difficulty of attempting to apply the penalty (with its disclosure and reasonable cause and good faith exceptions) on an intra-firm basis. A corollary of this rule is that a preparer who is subject to the penalty may not rely on the advice of an individual associated with the same firm as the preparer for purposes of the reasonable cause and good faith exception to the penalty. See § 1.6694-

2(d). In certain circumstances, both an individual preparer and the preparer's firm may be subject to the section 6694 penalty as under prior law. See § 1.6694-2(a) and § 1.6694-3(a).

Section 6694(a)

Prior to OBRA 1989, section 6694(a) imposed a \$100 penalty on an income tax return preparer if there was an understatement of liability on a Federal income tax return or claim for refund prepared by such preparer and the understatement was due to the negligent or intentional disregard of rules or regulations by the preparer.

OBRA 1989 made the following amendments to section 6694(a): (1) Changed the standard for imposing the penalty so that the penalty is now imposed if an understatement of liability is due to a position for which there was not a realistic possibility of being sustained on its merits; (2) increased the penalty amount from \$100 to \$250 per return or claim for refund; (3) added a disclosure exception for positions that are not frivolous; and (4) added a reasonable cause and good faith exception.

With respect to the new standard for imposing the penalty, Notice 90-20, 1990-1 C.B. 328, provides that a position will be considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. Section 1.6694-2(b) of the proposed regulations retains the definition of this standard set forth in Notice 90-20. The proposed regulations further provide that the analysis prescribed by § 1.6662-4(d)(3)(ii) for purposes of determining whether substantial authority is present applies for purposes of determining whether the realistic possibility standard is satisfied, and that only the authorities specified in § 1.6662-4(d)(3)(iii) are to be considered in the analysis. The proposed regulations provide examples that illustrate positions meeting the realistic possibility standard and positions not meeting the realistic possibility standard.

A preparer is not subject to penalty for a position that does not have a realistic possibility of being sustained on its merits if the position is not frivolous and is adequately disclosed. Disclosure is adequate for purposes of section 6694(a) if made on a properly completed and filed Form 8275, Disclosure Statement, attached to the

return (or qualified amended return) or claim for refund, or if made in accordance with the annual revenue procedure issued for purposes of disclosure out of the substantial understatement penalty.

The proposed regulations set forth different disclosure rules for signing and nonsigning preparers. Different rules are necessary because nonsigning preparers ordinarily do not have control over the return or claim for refund. Thus, signing preparers must disclose on the return or claim for refund (*i.e.*, on a Form 8275 or in accordance with the annual revenue procedure). Nonsigning preparers, on the other hand, generally will meet the disclosure requirements if they inform the taxpayer or another preparer (orally or in writing) that disclosure is necessary, or if the position is, in fact, adequately disclosed on the return or claim for refund.

A preparer also is not subject to penalty for a position that does not have a realistic possibility of being sustained on its merits if the understatement was due to reasonable cause and the preparer acted in good faith. Section 1.6694-2(d) provides that the reasonable cause and good faith determination will be made by considering all the relevant facts and circumstances, including the following factors: (1) The nature of the error causing the understatement; (2) the frequency of errors; (3) the materiality of errors; (4) the preparer's normal office practice; and (5) the extent to which the preparer reasonably relies on the advice of, or schedules prepared by, another preparer.

Section 6694(b)

Prior to OBRA 1989, section 6694(b) imposed a \$500 penalty on an income tax return preparer if there was an understatement of liability on a Federal income tax return or claim for refund and the understatement was due to a willful attempt by such preparer to understate the liability.

OBRA 1989 made the following amendments to section 6694(b): (1) Added reckless disregard of rules or regulations as a basis for imposing the section 6694(b) penalty; (2) made intentional disregard of rules or regulations (formerly under section 6694(a)) a basis for imposing the higher penalty under section 6694(b); and (3) increased the penalty amount from \$500 to \$1,000 per return or claim for refund. In addition, the legislative history indicates that the section 6694(b) penalty for disregarding rules or regulations should not be imposed if proper disclosure is made.

Section 1.6694-3(b) of the proposed regulations generally retains the current

regulations' provisions regarding willful understatements of liability.

Section 1.6694-3(c) provides that a preparer will be considered to have recklessly or intentionally disregarded a rule or regulation if a position contrary to the rule or regulation is taken on a return or claim for refund and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question. However, a preparer will not be considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation is not frivolous and is adequately disclosed. Disclosure is adequate for purposes of section 6694(b) if made on a properly completed and filed Form 8275 attached to the return (or qualified amended return) or claim, provided that the statutory or regulatory provision or ruling that is disregarded is adequately identified on the Form 8275. In the case of a position contrary to a revenue ruling, a preparer also will not be considered to have recklessly or intentionally disregarded a ruling that is not disclosed if the position contrary to the revenue ruling has a realistic possibility of being sustained on its merits.

Section 1.6694-3(e) sets forth different disclosure rules for signing and nonsigning preparers for purposes of section 6694(b).

Section 6694(c)

OBRA 1989 also revised section 6694(c)(1) expressly to permit the Internal Revenue Service to counterclaim in a refund proceeding for any portion of the section 6694 penalty that the preparer did not pay prior to commencing the proceeding. This new provision is reflected in § 1.6694-4(a)(4) of the proposed regulations.

Special Analyses

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

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an 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 during the week of June 3 through June 7, 1991. A notice of public hearing will be published in the *Federal Register* in the near future.

Drafting Information

The principal author of these proposed regulations is Lisa J. Byun, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6654-1 through 1.6709-1

Additions to tax, Administration and procedure, Income taxes, Penalties.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 1 of title 26 of the Code of Federal Regulations as follows.

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

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

Par. 2. Sections 1.6694-1 and 1.6694-2 are revised and new §§ 1.6694-0, 1.6694-3 and 1.6694-4 are added to read as follows.

§ 1.6694-0 Table of contents.

This section lists the captions that appear in the regulations under section 6694 of the Code.

§ 1.6694-1 Section 6694 penalties applicable to income tax return preparer.

- (a) Overview.
- (b) Income tax return preparer.
 - (1) In general.
 - (2) Signing and nonsigning preparers.
 - (3) Example.
- (c) Understatement of liability.
- (d) Abatement of penalty where taxpayer's liability not understated.
- (e) Verification of information furnished by taxpayer.
 - (1) In general.
 - (2) Example.
- (f) Effective date.

§ 1.6694-2 Penalty for understatement due to an unrealistic position.

- (a) In general.
- (b) Realistic possibility of being sustained on its merits.
 - (1) In general.

- (2) Authorities.
- (3) Examples.
- (4) Written determinations.
- (5) When "realistic possibility" determined.
 - (i) Signing preparers.
 - (ii) Nonsigning preparers.
- (c) Exception for adequate disclosure of nonfrivolous positions.
 - (1) In general.
 - (2) Frivolous.
 - (3) Adequate disclosure.
 - (i) Signing preparers.
 - (ii) Nonsigning preparers.
 - (A) Advice to taxpayers.
 - (B) Advice to another preparer.
 - (d) Exception for reasonable cause and good faith.
 - (1) Nature of the error causing the understatement.
 - (2) Frequency of errors.
 - (3) Materiality of errors.
 - (4) Preparer's normal office practice.
 - (5) Reliance on advice of another preparer.
 - (e) Burden of proof.

§ 1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

- (a) In general.
- (b) Willful attempt to understate liability.
- (c) Reckless or intentional disregard.
- (d) Examples.
- (e) Adequate disclosure.
 - (1) Signing preparers.
 - (2) Nonsigning preparers.
 - (i) Advice to taxpayers.
 - (ii) Advice to another preparer.
 - (f) Rules or regulations.
 - (g) Section 6694(b) penalty reduced by section 6694(a) penalty.
 - (h) Burden of proof.

§ 1.6694-4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

- (a) In general.
- (b) Preparer must bring suit in district court to determine liability for penalty.
- (c) Suspension of running of period of limitations on collection.
- (d) Effective date.

§ 1.6694-1 Section 6694 penalties applicable to income tax return preparer.

(a) *Overview.* Section 6694(a) and section 6694(b) impose penalties on income tax return preparers for certain understatements of liability on a return or claim for refund. The section 6694(a) penalty is imposed for an understatement of liability with respect to tax imposed by 13 subtitle A of the Internal Revenue Code that is due to a position for which there was not a realistic possibility of being sustained on its merits. The section 6694(b) penalty is imposed for an understatement of liability with respect to tax imposed by subtitle A of the Internal Revenue Code that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. See § 1.6694-2 for rules relating to the

penalty under section 6694(a). See § 1.6694-3 for rules relating to the penalty under section 6694(b).

(b) *Income tax return preparer*—(1) *In general.* Solely for purposes of the regulations under section 6694, the term "income tax return preparer" (preparer) means any person who is an income tax return preparer within the meaning of section 7701(a)(36) and § 301.7701-15, except that no more than one individual associated with a firm (for example, as a partner or employee) is treated as a preparer with respect to the same return or claim for refund. If a signing preparer is associated with a firm, that individual, and no other individual associated with the firm is a preparer with respect to the return or claim for purposes of section 6694. If two or more individuals associated with a firm are income tax return preparers with respect to a return or claim for refund, within the meaning of section 7701(a)(36) and § 301.7701-15, and none of them is the signing preparer, only one of the individuals is a preparer (i.e., nonsigning preparer) with respect to that return or claim for purposes of section 6694. In such a case, ordinarily, the individual who is a preparer for purposes of section 6694 is the individual with direct supervisory responsibility for the matter. To the extent provided in § 1.6694-2(a) and § 1.6694-3(a), an individual and the firm with which the individual is associated may both be subject to penalty under section 6694 with respect to the same return or claim for refund.

(2) *Signing and nonsigning preparers.* A "signing preparer" is any preparer who signs a return of tax or claim for refund as a preparer. A "nonsigning preparer" is any preparer who is not a signing preparer. Examples of nonsigning preparers are preparers who provide advice (written or oral) to a taxpayer or to a preparer who is not associated with the same firm as the preparer who provides the advice.

(3) *Example.* The provisions of paragraph (b) of this section are illustrated by the following example.

Example. Attorney A provides advice to Client C concerning the proper treatment of a significant item on C's income tax return. The advice constitutes preparation of a substantial portion of the return. In preparation for providing that advice, A discusses the matter with Attorney B, who is associated with the same firm as A, but A is the attorney with direct supervisory responsibility for the matter. For purposes of the regulations under section 6694, A is a preparer with respect to C's return and is subject to penalty under section 6694 with respect to C's return. B is not a preparer with respect to C's return and, therefore, is not subject to penalty under section 6694 with respect to a position taken on C's return. This

would be true even if B recommends that A advise C to take an undisclosed position that did not satisfy the realistic possibility standard. In addition, since B is not a preparer for purposes of the regulations under section 6694, A may not avoid a penalty under section 6694 with respect to C's return by claiming he relied on the advice of B. See § 1.6694-2 (d)(5).

(c) *Understatement of liability.* For purposes of the regulations under section 6694, an "understatement of liability" exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by subtitle A of the Internal Revenue Code, or an overstatement of the net amount creditable or refundable with respect to any tax imposed by subtitle A of the Internal Revenue Code. The net amount payable in a taxable year with respect to the return for which the preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by subtitle A of the Internal Revenue Code does not include additions to the tax provided by section 6654 and section 6655 (relating to underpayments of estimated tax). Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the preparer apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a penalty under section 6694(a) or section 6694(b) concerning a return or claim for refund has been assessed against one or more preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the return or claim for refund, then

(1) The assessment must be abated; and

(2) If any amount of the penalty was paid, that amount must be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer*—(1) *In general.* For purposes of section 6694(a) and section 6694(b), the preparer generally may rely in good faith without verification upon information furnished by the taxpayer. Thus, the preparer is not required to audit, examine or review books and records, business operations, or documents or other evidence in order to verify independently the taxpayer's information. However, the preparer may not ignore the implications of

information furnished to the preparer or actually known by the preparer. The preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist—for example, that the taxpayer maintain specific documents, before a deduction may be claimed. The preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition to the claiming of a deduction.

(2) *Example.* The provisions of paragraph (e) of this section are illustrated by the following example.

Example. A taxpayer, during an interview conducted by the preparer, stated that he had paid \$6,500 in doctor bills and \$5,000 in deductible travel and entertainment expenses during the tax year, when in fact he had paid smaller amounts. On the basis of this information, the preparer properly calculated deductions for medical expenses and for travel and entertainment expenses which resulted in an understatement of liability for tax. The preparer had no reason to believe that the medical expense and travel and entertainment expense information presented was incorrect or incomplete. The preparer did not ask for underlying documentation of the medical expenses but inquired about the existence of travel and entertainment expense records. The preparer was reasonably satisfied by the taxpayer's representations that the taxpayer had adequate records (or other sufficient corroborative evidence) for the deduction of \$5,000 for travel and entertainment expenses. The preparer is not subject to a penalty under section 6694.

(f) *Effective date.* Sections 1.6694-1 through 1.6694-3 are effective for documents prepared and advice given after December 31, 1991. Section 6694 and the existing rules and regulations thereunder (to the extent not inconsistent with the statute as amended by the Omnibus Budget Reconciliation Act of 1989), and Notice 90-20, 1990-1 C.B. 328, apply to documents prepared and advice given on or before December 31, 1991. For the effective date of § 1.6694-4, see § 1.6694-4(d).

§ 1.6694-2 Penalty for understatement due to an unrealistic position.

(a) *In general.* Except as otherwise provided in this section, if any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code is due to a position for which there was not a realistic possibility of being sustained on its merits, any person who is a

preparer with respect to such return or claim for refund who knew or reasonably should have known of such position is subject to a penalty of \$250 with respect to such return or claim for refund. An employer or partnership of a preparer subject to this penalty is also subject to the penalty if the employer or partnership (or one or more of its principal officers or general partners) also knew or reasonably should have known of the position.

(b) *Realistic possibility of being sustained on its merits—(1) In general.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits (realistic possibility standard). In making this determination, the possibility that the position will not be challenged by the Internal Revenue Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by § 1.6662-4(d)(3)(ii) for purposes of determining whether substantial authority is present applies for purposes of determining whether the realistic possibility standard is satisfied.

(2) *Authorities.* The authorities considered in determining whether a position satisfies the realistic possibility standard are those authorities provided in § 1.6662-4(d)(3)(iii).

(3) *Examples.* The provisions of paragraphs (b)(1) and (b)(2) of this section are illustrated by the following examples.

Example 1. A new statute is unclear as to whether a certain transaction that a taxpayer has engaged in will result in favorable tax treatment. Prior law, however, supported the taxpayer's position. There are no regulations under the new statute and no authority other than the statutory language and committee reports. The committee reports state that the intent was not to affect adversely transactions similar to the taxpayer's transaction. The taxpayer's position satisfies the realistic possibility standard.

Example 2. A taxpayer has engaged in a transaction that is affected adversely by a new statutory provision. Prior law supported a position favorable to the taxpayer. The preparer believes that the new statute is inequitable as applied to the taxpayer's situation. The statutory language is unambiguous as it applies to the transaction (e.g., it applies to all manufacturers and the taxpayer is a manufacturer of widgets). The committee reports do not specifically address the taxpayer's situation. A position contrary to the statute does not satisfy the realistic possibility standard.

Example 3. The facts are the same as in *Example 2*, except the committee reports indicate that Congress did not intend to apply the new statutory provision to the taxpayer's transaction (e.g., to a manufacturer of widgets). Thus, there is a conflict between the general language of the statute, which appears to affect adversely the taxpayer's transaction, and a specific statement in the committee reports that transactions such as the taxpayer's are not adversely affected. Whether a return position consistent with the committee reports satisfies the realistic possibility standard can be determined only by a careful analysis of the relevant authorities.

Example 4. The instructions to an item on a tax form published by the Internal Revenue Service are incorrect and are clearly contrary to the regulations. Before the return is prepared, the Internal Revenue Service publishes an announcement acknowledging the error and providing the correct instruction. Under these facts, a position taken on a return which is consistent with the regulations satisfies the realistic possibility standard. On the other hand, a position taken on a return which is consistent with the incorrect instructions does not satisfy the realistic possibility standard. However, if the preparer relied on the incorrect instructions and was not aware of the announcement or the regulations, the reasonable cause and good faith exception may apply depending on all facts and circumstances. See § 1.6694-2(d).

Example 5. A statute is silent as to whether a taxpayer may take a certain position on the taxpayer's 1991 Federal income tax return. Three private letter rulings issued to other taxpayers in 1987 and 1988 support the taxpayer's position. However, proposed regulations issued in 1990 are clearly contrary to the taxpayer's position. After the issuance of the proposed regulations, the earlier private letter rulings cease to be authorities and are not taken into account in determining whether the taxpayer's position satisfies the realistic possibility standard. See § 1.6694-2(b)(2) and § 1.6662-4(d)(3)(iii). The taxpayer's position may or may not satisfy the realistic possibility standard, depending on an analysis of all the relevant authorities.

Example 6. In the course of researching whether a particular position has a realistic possibility of being sustained on its merits, a preparer discovers that a taxpayer took the same position on a return several years ago and that the return was audited by the Service. The taxpayer tells the preparer that the revenue agent who conducted the audit was aware of the position and decided that the treatment on the return was correct. The revenue agent's report, however, made no mention of the position. The determination by the revenue agent is not authority for purposes of the realistic possibility standard. However, the preparer's reliance on the revenue agent's determination in the audit may qualify for the reasonable cause and good faith exception depending on all facts and circumstances. See § 1.6694-2(d). Also see § 1.6694-2(b)(4) and § 1.6662-4(d)(3)(iv)(A) regarding affirmative statements in a revenue agent's report.

Example 7. In the course of researching whether an interpretation of a phrase incorporated in the Internal Revenue Code has a realistic possibility of being sustained on its merits, a preparer discovers that identical language in the taxing statute of another jurisdiction (e.g., a state or foreign country) has been authoritatively construed by a court of that jurisdiction in a manner which would be favorable to the taxpayer, if the same interpretation were applied to the phrase applicable to the taxpayer's situation. The construction of the statute of the other jurisdiction is not authority for purposes of determining whether the position satisfies the realistic possibility standard. See § 1.6694-2(b)(2) and § 1.6662-4(d)(3)(iii). However, as in the case of conclusions reached in treatises and legal periodicals, the authorities underlying the court's opinion, if relevant to the taxpayer's situation, may give a position favorable to the taxpayer a realistic possibility of being sustained on its merits. See § 1.6694-2(b)(2) and § 1.6662-4(d)(3)(iii).

Example 8. In the course of researching whether an interpretation of a statutory phrase has a realistic possibility of being sustained on its merits, a preparer discovers that identical language appearing in another place in the Internal Revenue Code has consistently been interpreted by the courts and by the Service in a manner which would be favorable to the taxpayer, if the same interpretation were applied to the phrase applicable to the taxpayer's situation. No authority has interpreted the phrase applicable to the taxpayer's situation. The interpretations of the identical language are relevant in arriving at a well reasoned construction of the language at issue, but the context in which the language arises also must be taken into account in determining whether the realistic possibility standard is satisfied.

Example 9. A new statutory provision is silent on the tax treatment of an item under the provision. However, the committee reports explaining the provision direct the Treasury to issue regulations interpreting the provision in a specified way. No regulations have been issued at the time the preparer must recommend a position on the tax treatment of the item, and no other authorities exist. The position supported by the committee reports satisfies the realistic possibility standard.

(4) *Written determinations.* To the extent a position has substantial authority with respect to the taxpayer by virtue of a "written determination" as provided in § 1.6662-4(d)(3)(iv)(A), such position will be considered to satisfy the realistic possibility standard with respect to the taxpayer's preparer for purposes of section 6694(a).

(5) *When "realistic possibility" determined.* For purposes of this section, the requirement that a position satisfy the realistic possibility standard must be satisfied on the date prescribed by paragraph (b)(5)(i) or (b)(5)(ii) of this section, whichever is applicable.

(i) *Signing preparers.* (A) In the case of a signing preparer, the relevant date

is the date the preparer signs and dates the return or claim for refund.

(B) If the preparer did not date the return or claim for refund, the relevant date is the date the taxpayer signed and dated the return or claim for refund. If the taxpayer also did not date the return or claim for refund, the relevant date is the date the return or claim for refund was filed.

(ii) *Nonsigning preparers.* In the case of a nonsigning preparer, the relevant date is the date the preparer provides the advice. That date will be determined based on all the facts and circumstances.

(c) *Exception for adequate disclosure of nonfrivolous positions—(1) In general.* The section 6694(a) penalty may not be imposed on a preparer if the position taken is not frivolous and is adequately disclosed. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (d) of this section.

(2) *Frivolous.* For purposes of this section, a "frivolous" position with respect to an item is one that is patently improper.

(3) *Adequate disclosure—(i) Signing preparers.* In the case of a signing preparer, disclosure of a position that does not satisfy the realistic possibility standard is adequate only if the disclosure is made in accordance with § 1.6662-4(f) (which permits disclosure on a properly completed and filed Form 8275 or on the return in accordance with an annual revenue procedure).

(ii) *Nonsigning preparers.* In the case of a nonsigning preparer, disclosure of a position that does not satisfy the realistic possibility standard is adequate if the position is disclosed in accordance with § 1.6662-4(f) (which permits disclosure on a properly completed and filed Form 8275 or on the return in accordance with an annual revenue procedure). In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (c)(3)(ii)(A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers.* (1) If a nonsigning preparer provides advice to the taxpayer with respect to a position that does not satisfy the realistic possibility standard, disclosure of that position is adequate if the advice includes a statement that the position lacks substantial authority and, therefore, may be subject to penalty under section 6662(d) unless adequately disclosed in the manner provided in § 1.6662-4(f) (or in the case of a tax shelter item, that the position lacks substantial authority and, therefore,

may be subject to penalty under section 6662(d) regardless of disclosure). If the advice with respect to the position is in writing, the statement concerning disclosure (or the statement regarding possible penalty under section 6662(d)) also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose (or the advice regarding possible penalty under section 6662(d)) also may be oral. The determination as to whether oral advice as to disclosure (or the oral advice regarding possible penalty under section 6662(d)) was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure (or the oral advice regarding possible penalty under section 6662(d)) generally is sufficient to establish that the advice was given to the taxpayer.

(2) In rare cases where the preparer concludes that disclosure under paragraph (c)(3)(ii)(A)(1) of this section is not appropriate because a position has substantial authority but the position does not satisfy the realistic possibility standard, disclosure is adequate if the preparer advises the taxpayer that the position does not have a realistic possibility of being sustained on its merits and, therefore, must be properly disclosed in order for the preparer to avoid the penalty under section 6694(a).

(B) *Advice to another preparer.* If a nonsigning preparer provides advice to another preparer with respect to a position that does not satisfy the realistic possibility standard, disclosure of that position is adequate if the advice includes a statement that disclosure under section 6694(a) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice regarding disclosure was given to the other preparer.

(d) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the preparer acted in good faith. Factors to consider include—

(1) *Nature of the error causing the understatement.* Whether the error resulted from a provision that was so complex, uncommon, or highly technical that a competent preparer of returns or claims of the type at issue reasonably could have made the error. The reasonable cause and good faith exception does not apply to an error that would have been apparent from a general review of the return or claim for refund by the preparer.

(2) *Frequency of errors.* Whether the understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is sufficiently obvious, flagrant or material. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* Whether the understatement was material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

(4) *Preparer's normal office practice.* Whether the preparer's normal office practice indicates that the error in question would rarely occur and the normal office practice was followed in preparing the return or claim in question. In applying this normal office practice standard, due regard must be given to other facts and circumstances such as the knowledge of the preparer. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims and generally must involve, at a minimum in the case of a signing preparer, checklists, methods for obtaining necessary information from the taxpayer, an examination of the prior year's return, and review procedures. Notwithstanding the above, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims.

(5) *Reliance on advice of another preparer.* Whether the preparer relied on the advice of, or schedules prepared by, another preparer (advice) as defined in § 1.6694-1(b). The reasonable cause and good faith exception applies if the preparer relied in good faith on the advice of another preparer (or a person who would be considered a preparer under § 1.6694-1(b) had the advice constituted preparation of a substantial portion of the return or claim for refund) who the preparer had reason to believe was competent to render such advice. A preparer is not considered to have relied in good faith if

- (i) The advice is unreasonable on its face,
- (ii) The preparer knew or should have known that the other preparer was not aware of all relevant facts, or
- (iii) The preparer knew or should have known (given the nature of the preparer's practice), at the time the return or claim for refund was prepared, that the advice was no longer reliable due to developments in the law since the time the advice was given.

The advice may be written or oral, but in either case the burden of establishing that the advice was received is on the preparer.

(e) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(a), the issues on which the preparer bears the burden of proof include whether:

- (1) The preparer knew or reasonably should have known that the questioned position was taken on the return,
- (2) There is reasonable cause and good faith with respect to such position, and
- (3) The position was disclosed adequately in accordance with paragraph (c) of this section.

§ 1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* If any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code is due to—

- (1) A willful attempt in any manner to understate the liability for tax by a preparer of the return or claim for refund, or
- (2) Any reckless or intentional disregard of rules or regulations by any such person,

such preparer is subject to a penalty of \$1,000 with respect to such return or claim for refund. An employer or partnership of a preparer subject to this penalty is also subject to the penalty if the employer or partnership (or one or

more of its principal officers or general partners) also participated in the willful attempt to understate liability, or participated in or knew of the reckless or intentional disregard of a rule or regulation.

(b) *Willful attempt to understate liability.* A preparer is considered to have willfully attempted to understate liability if the preparer disregards, in an attempt wrongfully to reduce the tax liability of the taxpayer, information furnished by the taxpayer or other persons. For example, if a preparer disregards information concerning certain items of taxable income furnished by the taxpayer or other persons, the preparer is subject to the penalty. Similarly, if a taxpayer states to a preparer that the taxpayer has only two dependents, and the preparer reports six dependents on the return, the preparer is subject to the penalty.

(c) *Reckless or intentional disregard.*
 (1) Except as provided in paragraphs (c) (2) and (c) (3) of this section, a preparer is considered to have recklessly or intentionally disregarded a rule or regulation if the preparer takes a position on the return or claim for refund that is contrary to a rule or regulation (as defined in paragraph (f) of this section) and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question. A preparer is reckless in not knowing of a rule or regulation if the preparer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable preparer would observe in the situation.

(2) A preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation is not frivolous as defined in § 1.6694-2(c)(2) and is adequately disclosed in accordance with paragraph (e) of this section.

(3) In the case of a position contrary to a revenue ruling, a preparer is not considered to have recklessly or intentionally disregarded the ruling if the position has a realistic possibility of being sustained on its merits, or if the position is not frivolous as defined in § 1.6694-2(c)(2) and is adequately disclosed in accordance with paragraph (e) of this section.

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples.

Example 1. A taxpayer provided a preparer with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this

expense was identified as personal on the check register. The preparer knowingly deducted the expenses of the taxpayer's domestic help as wages paid in the taxpayer's business. The preparer is subject to the penalty under section 6694(b).

Example 2. A taxpayer provided a preparer with detailed check registers to compute the taxpayer's expenses. However, the preparer knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because the preparer disregarded information provided in the check registers, the preparer is subject to the penalty under section 6694(b).

Example 3. A revenue ruling holds that certain expenses incurred in the purchase of a business must be capitalized. The Code is silent as to whether these expenses must be capitalized or may be deducted currently, but five cases from different courts hold that these particular expenses may be deducted currently. There is no other authority. Under these facts, a position taken contrary to the revenue ruling on a return or claim for refund is not a reckless or intentional disregard of a rule, since the position contrary to the revenue ruling has a realistic possibility of being sustained on its merits. Therefore, the preparer will not be subject to a penalty under section 6694(b) even though the position is not adequately disclosed.

Example 4. Final regulations provide that certain expenses incurred in the purchase of a business must be capitalized. One Tax Court case has expressly invalidated that portion of the regulations. Under these facts, a position contrary to the regulation will subject the preparer to the section 6694(b) penalty even though the position may have a realistic possibility of being sustained on its merits. The preparer, however, will not be subject to the section 6694(b) penalty if the position is properly disclosed in the manner provided in paragraph (e) of this section.

(e) **Adequate disclosure**—(1) **Signing preparers.** In the case of a signing preparer, disclosure of a position that is contrary to a rule or regulation is adequate only if the disclosure is made in accordance with §§ 1.6662-4 (f)(1), (3), (4) and (5) (which permit disclosure on a properly completed and filed Form 8275). The disclosure must adequately identify the rule or regulation being challenged. The provisions of § 1.6662-4 (f)(2) (which permit disclosure on the return in accordance with an annual revenue procedure) will not apply for purposes of this section.

(2) **Nonsigning preparers.** In the case of a nonsigning preparer, disclosure of a position that is contrary to a rule or regulation is adequate if the position is disclosed in the manner provided in paragraph (e)(1) of this section. In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (e)(2) (i) or (ii) of this section, whichever is applicable.

(i) **Advice to taxpayers.** In the case of a nonsigning preparer who provides advice to the taxpayer with respect to a position that is contrary to a rule or regulation, disclosure of that position is adequate if the advice includes a statement that the position is contrary to a specified rule or regulation and, therefore, is subject to a penalty described in section 6662(c) unless adequately disclosed in the manner provided in § 1.6662-3(c)(2) (which permits disclosure on a properly completed and filed Form 8275 and which requires adequate identification of any rule or regulation being challenged). If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the taxpayer.

(ii) **Advice to another preparer.** If a nonsigning preparer provides advice to another preparer with respect to a position that is contrary to a rule or regulation, disclosure of that position is considered adequate if the advice includes a statement that disclosure under section 6694(b) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the other preparer.

(f) **Rules or regulations.** The term "rules or regulations" includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings issued by the Internal Revenue Service.

(g) **Section 6694(b) penalty reduced by section 6694(a) penalty.** The amount of any penalty to which a preparer may be subject under section 6694(b) for a return or claim for refund is \$1,000 reduced by any amount assessed and collected against the preparer under section 6694(a) for the same return or claim.

(h) **Burden of proof.** In any proceeding with respect to the penalty imposed by section 6694(b), the Government bears the burden of proof on the issue of whether the preparer willfully attempted to understate the liability for tax. See section 7427. The preparer bears the burden of proof on such other issues as whether:

(1) The preparer recklessly or intentionally disregarded a rule or regulation; and

(2) disclosure was adequately made in accordance with paragraph (e) of this section.

§ 1.6694-4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) **In general**—(1) The Internal Revenue Service will investigate the preparation by a preparer of a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and will send a report of the examination to the preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which there was not a realistic possibility of being sustained on its merits under section 6694(a); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the Internal Revenue Service will also send, before assessment of either penalty, a 30-day letter to the preparer notifying him of the proposed penalty or penalties and offering an opportunity to the preparer to request further administrative consideration and a final administrative determination by the Internal Revenue Service concerning the assessment. If the preparer then makes a timely request, assessment may not be made until the Internal Revenue Service makes a final administrative determination adverse to the preparer.

(2) If the Internal Revenue Service assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(3) Within 30 days after the day on which notice and demand of either of the two penalties described in section

6694(a) and section 6694(b) is made against the preparer, the preparer must either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or claim for refund and file a claim for refund of the amount paid.

(4) If the preparer pays an amount and files a claim for refund under paragraph (a) (3) (ii) of this section, the Internal Revenue Service may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of—

(i) A date which is more than 30 days after the earlier of—

(A) The day on which the preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

However, the Internal Revenue Service may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount assessed. Final resolution of a proceeding includes any settlement between the Internal Revenue Service and the preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the Internal Revenue Service in contravention of this paragraph (a)(4) may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty.* If, within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(3)(ii) of this section is denied, or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund,

the preparer fails to begin a proceeding for refund in the appropriate United States district court, the Internal Revenue Service may proceed with collection of the amount of the penalty not paid under paragraph (a)(3)(ii) of this section.

(c) *Suspension of running of period of limitations on collection.* The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) shall be suspended for the period during which the Internal Revenue Service, under paragraph (a)(4) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d) *Effective date.* The provisions of this section are effective as of December 19, 1989.

Fréd T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-4805 Filed 2-28-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[IA-110-90]

RIN 1545-AP27

Determination of Rate of Interest— Increase in Rate of Interest Payable on Large Corporate Underpayments; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to an increase in rate of interest payable on large corporate underpayments.

DATES: The public hearing will be held on April 2, 1991, beginning at 10 a.m. Outlines of oral comments must be delivered by March 19, 1991.

ADDRESSES: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-110-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6621(c) of the Internal Revenue Code. The proposed

regulations appeared in the Federal Register for Wednesday, December 19, 1990, (55 FR 52054).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, March 19, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-5037 Filed 3-1-91; 8:45 am]

BILLING CODE 4830-01-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: Proposed rule.

SUMMARY: OSM is announcing the reopening of the comment period for part of the Alabama formal submittal of proposed amendments to the Alabama regulatory program (hereinafter referred to as the Alabama program) which were submitted on July 16, 1990, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments relate to revegetation, siltation structures, roads, exploration,

performance bonds and other topics. These amendments are primarily in response to changes in the Federal regulations (30 CFR, chapter VII) between June 8, 1988, and August 30, 1989 (Regulation Reform Review III).

Proposed changes to the Alabama rules made in response to changes in the Federal rules were previously published in the September 6, 1990, Federal Register (55 FR 36660). Comments made in response to that announcement have been considered. However, Alabama had made additional changes which were not required by Federal rule changes and these changes were inadvertently omitted from the above Federal Register notice. These changes have been incorporated into the list of changes under "Discussion of Amendments." In addition, Alabama's new rule covering the extraction of coal incidental to the extraction of other minerals has been removed from this list since this rule is unrelated to the other changes and is covered by the previous (September 8, 1990) Federal Register announcement.

This notice sets forth the times and locations that the Alabama program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearings, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 3, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on March 29, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 19, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jesse Jackson, Jr., Director, Birmingham Field Office at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 280 West Valley Avenue, Room 302, Homewood, Alabama 35209. Telephone: (205)731-0890.

Alabama Surface Mining Commission, First Federal Bank Building, 2nd

Floor, 1811 Second Avenue, Jasper, Alabama 35501. Telephone: (205)221-4130.

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 May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including 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). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Discussion of Amendments

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on February 7, 1990, that a number of the Alabama regulations are less effective than or inconsistent with the Federal requirements as revised between June 8, 1988, and August 30, 1989.

By letter dated July 18, 1990 (Administrative Record No. AL-462), Alabama submitted to OSM a State program amendment package consisting of approximately 55 revisions to the Alabama program. These revisions address changes in the Alabama program required by the above-mentioned letter of February 7, 1990, and additional changes initiated by Alabama primarily for reasons for clarity, organization and consistency with the Federal regulations.

The Alabama Surface Mining Commission proposes the following rule-making actions:

Rule No. and Title: [Intended Action]
 880-X-2A-.06 Definition [Amend]
 880-X-2A-.07(1) Two Acres [Del]
 880-X-2A-.07(2) Exemptions [Add]
 880-X-2A-.07(3) Jurisdiction [Amend]
 880-X-8B-.03 Unpermitted Reclamation [Amend]
 880-X-8C-.01 Exploration [Amend]
 880-X-8C-.02 Exploration [Repeal]
 880-X-8C-.03 Exploration [Repeal]
 880-X-8C-.04 Exploration [Amend]
 880-X-8C-.04(1)(c) Mapping [Amend]
 880-X-8C-.05 Exploration: General [Amend]
 880-X-8C-.06 Exploration Approval [Amend]

880-X-8C-.07 Exploration Hearing [Amend]
 880-X-8C-.09 Commercial Use/Sale [New Rule]
 880-X-8C-.10 Information [Amend]
 880-X-8F-.11 Impoundments [Amend]
 880-X-8F-.17(1) Specifications [Amend]
 880-X-8F-.17(2) Certifications [Add]
 880-X-8F-.19 Support Facilities [New Rule]
 880-X-8I-.12 Impoundments [Amend]
 880-X-8I-.17(1) Specifications [Amend]
 880-X-8I-.17(2) Certifications [Add]
 880-X-8I-.19 Support Facilities [New Rule]
 880-X-8J-.04(4)(e) Total Prime Farmland [Add]
 880-X-9A-.04(2) Increments, Size and Configuration [Add]
 880-X-9B-.04(2) Revegetation [Amend]
 880-X-9C-.03(7) Self Bonding [Amend]
 880-X-9C-.04(2) Liability Insurance [Amend]
 880-X-9D-.02(4) Interest in Bonds/ Access [Amend]
 880-X-9E-.05(1)(b) Bond Money [Amend]
 880-X-9E-.05(3) Excess Costs Collection [Add]
 880-X-10B-.01 Scope [Amend]
 880-X-10B-.02 Permitting Info [Amend]
 880-X-10B-.06(d) Exploration: Topsoil [Amend]
 880-X-10B-.07 Exploration: Permitting [Repeal]
 880-X-10C-.17 Hydrologic Balance/Siltation Structures [Amend]
 880-X-10C-.20 Impoundments [Amend]
 880-X-10C-.62(1)(a) Alternative Sampling [Del]
 880-X-10C-.67 Roads: General [Amend/Add]
 880-X-10C-.68 Primary Roads [Amend/Add]
 880-X-10C-.69 Roads: Drainage [Repeal]
 880-X-10C-.70 Roads: Surfacing [Repeal]
 880-X-10C-.71 Roads: Restoration [Repeal]
 880-X-10D-.17 Hydrologic Balance/Siltation Structures [Amend]
 880-X-10D-.20 Impoundments [Amend]
 880-X-10D-.56(1)(a) Alternative Sampling [Del]
 880-X-10D-.65 Roads: General [Amend/Add]
 880-X-10D-.66 Primary Roads [Amend/Add]
 880-X-10D-.67 Roads: Drainage [Repeal]
 880-X-10D-.68 Roads: Surfacing [Repeal]

880-X-10D-.69 Road: Restoration
[Repeal]
880-X-10G-.05(4) Tilling [Add]
880-X-11B-.02(8-9) Abandoned Sites
[Add]

III. Public Comment Procedure

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Alabama satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., March 19, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

"ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-4989 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 913

Illinois Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to make the requirements of the Illinois program no less effective than the Federal program, to enhance the clarity of Illinois' rules, and to meet State codification rules and guidelines. It concerns changes made to the Illinois Administrative Code (IAC), Title 62, Mining, chapter I.

This notice sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 3, 1991. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on March 29, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 19, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge,

one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, Suite 202, Springfield, Illinois 62704, telephone: (217) 492-4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, telephone: (217) 782-4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Pursuant to 30 CFR 732.17, OSM identified required revisions to the Illinois regulatory program by letters dated September 20, 1989 and February 7, 1990. OSM also notified Illinois of deficiencies which OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations in an Illinois program amendment approved by the Director on August 29, 1990 (55 FR 35301) and in deficiency letters dated November 2, 1990 and December 21, 1990.

In response to these notifications, Illinois by letter dated February 1, 1991 (Administrative Record No. IL-1131), submitted the following proposed changes to its program.

At 62 IAC 1700.11, a change to subsection (a) clarifies that all of the Department's regulations apply unless otherwise exempted. A revision to subsection (a)(2) adds a reference to 62 IAC 1702 making the incidental coal extraction exemption subject to the requirements of that new section. Subsection (c) was modified to clarify that 62 IAC 1815 and 1840 through 1846 apply to coal exploration operations and surface coal mining and reclamation operations regardless of whether a permit is required, except as otherwise specified in those rules. At subsections

(a)(3), (a)(4), and (c) referenced statutory and regulatory provision dates were changed to reflect the latest versions.

At 62 IAC 1701.APPENDIX A, a definition for "Road" was added, statutory citations throughout the section were amended to reflect proper citation form and correct dates, and clerical errors were corrected.

A new set of regulations at 62 IAC 1702 were proposed to implement and provide criteria, application and reporting requirements for the exemption concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total mineral tonnage mined for purposes of commercial use or sale.

At 62 IAC 1761.11(a), the phrase "any future" before the word "guidelines" was deleted; the reference "published at 47 FR 39454 (September 7, 1982)" was added after the word "Act"; and a sentence "The guidelines at 47 FR 39454 do not include any subsequent editions or amendments" was added in order to incorporate by reference guidelines relating to the Wild and Scenic Rivers Act.

In proposed changes to 62 IAC 1761.11(d)(2), the approval of public road authorities would no longer be required with respect to affected areas within 100 feet of a public road; the word "and" was deleted in paragraph (A); new paragraph (B) would require the approval of public road authorities where public roads are to be relocated or closed; and existing paragraph (B) was relettered to paragraph (C).

Proposed changes to 62 IAC 1761.12(c) and (c)(1) correspond to the proposed changes to 62 IAC 1761.11(d)(2) and (d)(2)(B) discussed above. A proposed change at 62 IAC 1761.12(c)(2) clarifies who may request a public hearing and establishes a time limit in which public hearing requests shall be submitted.

At 62 IAC 1772.11(b)(5), the Department updated the reference to forms required for coal exploration activities to correspond to changes in forms reporting adopted by the Illinois Department of Mines and Minerals' Oil and Gas Division.

Illinois regulation 62 IAC 1772.14 was divided into two subsections (a) and (b). In subsection (a), the Department expanded its scope to apply to commercial use, as well as sale, of coal extracted during coal exploration operations under an exploration permit. In subsection (b), new application requirements were added for the Department's approval of an exemption from obtaining a permit for the sale or commercial use of coal extracted during exploration operations if such sale or

commercial use of coal extracted during exploration operations is for coal testing purposes only.

Changes to four sections are proposed for 62 IAC 1773, Requirements for Permits and Permit Processing. In section 1773.5, the word "or" was deleted and the word "and" was added in the phrase "of the relationships specified in subsection (a) and (b)." Proposed changes in section 1773.11 correct a clerical error in subsection (a) by adding the word "been" in the phrase "regardless of whether the authorization to conduct surface coal mining operations has expired or has "been" terminated, revoked, or suspended," and changes the date of referenced statutory provisions in subsection (b)(1)(C). Changes to section 1773.15(b)(1) clarify that the provision applies to all unabated enforcement actions and delinquent civil penalties incurred under any State program pursuant to SMCRA, not just those actions and penalties issued by Illinois or OSM; and a modification to subsection (b)(1)(B) clarifies that the rule is not limited to administrative and judicial appeal decisions of violations issued by Illinois, but also applies to administrative and judicial appeal decisions concerning violations issued by other regulatory authorities. Section 1773.17(h) was changed to clarify that the provision applies whenever a cessation order is issued, regardless of whether it is issued by the Department or by OSM by adding a reference to Federal regulation 30 CFR 843.11.

At 62 IAC 1774.13(b)(1), the Department proposed a 90-day time period to approve or disapprove insignificant permit revision applications.

At 62 IAC 1778.14, the first proposed change to subsection (c) clarifies that the reference that the reference to the Federal Surface Mining Control and Reclamation Act (SMCRA) includes all state programs approved thereunder. The second proposed change to subsection (c) clarifies that the violation reporting requirements apply only to Federal laws or regulations pertaining to air or water environmental protection, rather than every violation of a Federal law or regulation.

A typographical error was corrected at 62 IAC 1780.16(b)(3)(B) by deleting the fourth occurrence of the word "of" in the second sentence.

At 62 IAC 1780.37, which provides surface mining permit application requirements for transportation facilities, existing subsections were relettered or renumbered and three new subsections were added. Proposed new subsection (a)(5) requires drawings and

specifications for proposed stream fords to be used as temporary routes. Proposed new subsection (a)(7) requires removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

New section 62 IAC 1780.39 requires each applicant for a surface coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

At 62 IAC 1784.21(a)(2), the date of the statutory reference was changed in paragraph (A), and the phrase "or other applicable State or Federal law" was added at the end of paragraph (C).

At 62 IAC 1784.24, which provides underground mining application requirements for transportation facilities, existing subsections were relettered or renumbered and three new subsections were added. Proposed new subsection (a)(5) requires drawings and specifications for proposed stream fords to be used as temporary routes. Proposed new subsection (a)(7) requires removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

New section 62 IAC 1784.30 requires each applicant for an underground coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

Several changes were proposed to regulations under 62 IAC 1816 which contains permanent program performance standards for surface mining activities. At 62 IAC 1816.49, a change was made to update the referenced edition of 30 CFR 77.216 to 1990 in subsection (a)(1). The period was deleted and a comma and the word "or" added to subsection (a)(3). New subsection (a)(4) provides an alternative to the performance standards in subsection (a)(3) by specifying that compliance with the referenced U.S. Soil Conservation Service's standards satisfies the Department's performance standards for certain impoundments. Existing subsections (a)(4) through

(a)(11) were renumbered (a)(5) through (a)(12). A typographical error was corrected in subsection (b)(9); the factor "soil and type" was corrected to "soil type."

At 62 IAC 1816.68, new subsections (a)(18) and (a)(19) add weather conditions to the list of data required to be maintained by operators in their records of blasting operations.

At 62 IAC 1816.84, subsection (b)(2) was rewritten to require that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event. New subsection (f) specifies that, for impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following each occurrence of that event.

At 62 IAC 1816.111 (a)(4) and (b)(1), typographical errors were corrected. In subsection (a)(4), the spelling of the word "stabilizing" was corrected; and in subsection (b)(5), the word "which" was deleted and the word "with" was added. Also in subsection (b)(5), citations to various State statutes were updated.

The Department's requirements for revegetation success standards are set forth at 62 IAC 1816.116. Proposed new subsections (a)(2)(D) and (a)(2)(E) define the extent to which rill and gully repairs can be considered nonaugmentative on cropland-capable and noncropland-capable land respectively. Existing subsection (a)(2)(D) was relettered to (a)(2)(F). Proposed changes to subsection (a)(3) eliminates the term "stocking" and requires using techniques in section 1816.117(d) for measurement of vegetative ground cover. Proposed changes to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. A proposed change at subsection (a)(3)(D) deletes the term "stocking" and substitutes for it the term "population(s)." Changes to subsection (a)(3)(E) specify that for revegetation success purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period and allows one successful year of corn production to be used as a substitute for one successful year of hay production for revegetation success purposes on high capability land. The proposed change to subsection

(a)(4)(A)(iii) corrects a citation to a regulation. The proposed modification to subsection (a)(4)(D) limits the use of wheat crops for revegetation success purposes to one year. The proposed change to subsection (b)(2) changes the deadline date for reclamation activity report submittals from January 1 to February 15 of each year.

The Department's requirements for revegetation of tree and shrub vegetation are set forth at 62 IAC 1816.117. Changes at subsections (a), (a)(1), (b), (c), and (c)(6) deletes use of the term "stocking" and substitutes the term "vegetation" or "population." Also, modifications to subsection (a)(1) require that for revegetation success purposes, survival counts are to be taken during the last year of the responsibility period and that trees and shrubs shall be healthy to be considered for survival counts. Proposed changes to subsection (a)(3) specify that ground cover is not required on imperious structures such as parking lots and permanent roads, and deletes language relating to rock areas and surface water drainage ways. The proposed change to subsection (a)(4) corrects the spelling of the word "legumes." Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in Illinois. A proposed change at subsection (c)(2) corrects the spelling of the word "enumerator." Proposed new subsection (d) establishes a techniques for measuring the revegetative success of ground cover.

Illinois regulation 62 IAC 1816.150 was rewritten to establish: classification criteria for mine roads; performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with surface coal mining operations; environmental protection criteria for the design, construction and reconstruction of roads; and requirements for the location and maintenance of roads associated with surface coal mining operations.

New section 62 IAC 1816.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing.

At 62 IAC 1816. Appendix A, changes to the "Soybean Sampling Technique for Drilled or Planted Beans and to the Mixed Hay Sampling Technique" were made to correct mathematical errors in the formulas. Proposed changes to "Wheat Sampling Techniques and Oats Sampling Techniques" establish

mathematical formulas for measuring row crops.

Several changes were proposed to regulations at 62 IAC 1817 which contain permanent program performance standards for underground mining activities. At 62 IAC 1817.49, the date of the citation to 30 CFR 77.216 was changed from 1989 to 1990 in subsection (a)(1). In subsection (a)(3) the period was deleted and a comma and the word "or" were added. A new subsection (a)(4) provides an alternative to the performance standards in subsection (a)(3) by specifying that compliance with referenced U. S. Soil Conservation Services' standards satisfies the Department's performance standards for certain impoundments. Existing subsections (a)(4) through (a)(11) were renumbered (a)(5) through (a)(12). A change at subsection (b)(9) corrects the factor "soil and type" to "soil type."

At 62 IAC 1817.68 new subsections (a)(18) and (a)(19) and weather conditions to the list of data required to be maintained by operators in their records of blasting operations.

At 62 IAC 1817.84, subsection (b)(2) was rewritten to require that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event. New subsection (f) specifies that, for an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event must be removed within the 10-day period following the design precipitation event.

At 62 IAC 1817.116, proposed new subsections (a)(2)(D) and (a)(2)(E) define the extent to which rill and gully repairs can be considered nonaugmentative. Existing subsection (a)(2)(D) was relettered to (a)(2)(E). The proposed changes to subsection (a)(3) eliminate the use of the term "stocking" and requires using techniques in section 1817.117(d) for measurement of revegetation success of ground cover. The proposed change to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. The proposed change to subsection (a)(3)(D) eliminates the term "stocking" and substitutes the term "population(s)." The proposed change to subsection (a)(3)(E) specifies that for revegetation success

purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period. The proposed new last sentence of subsection (a)(3)(E) allows one successful year of corn production to be used as a substitute for one successful year of hay production for revegetation success purposes on high capability land. At subsection (b)(2), the deadline date for reclamation activity report submittals is changed from January 1 to February 15 of each year.

The Department's requirements for revegetation of tree and shrub vegetation are set forth at 62 IAC 1817.117. A proposed change at subsections (a), (a)(1), (b), (c), and (c)(6) deletes use of the term "stocking" and substitutes the terms "population" or "vegetation." Proposed changes at subsection (a)(1) require that for revegetation success purposes, survival counts are to be taken during the last year of the responsibility period and that trees and shrubs counted shall be healthy. Changes to subsection (a)(3) specify that ground cover is not required on impervious structures, and deletes language relating to rock areas and surface water drainage ways. Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in Illinois. Proposed new subsection (d) establishes a method of measuring vegetative ground cover.

Illinois regulation 62 IAC 1817.150 was rewritten to establish: Classification criteria for mine roads; performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with underground coal mining operations; environmental protection criteria for the design, construction and reconstruction of roads; and requirements for the location and maintenance of roads associated with underground coal mining operations.

New section 62 IAC 1817.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing.

At 62 IAC 1823.14, a proposed new subsection (g) requires that prime farmland have a planned erosion control system in certain specified instances. At 62 IAC 1823.15(b)(3), the proposed changes specify that for revegetation success purposes measurements may not be taken on prime farmland during the first year of the responsibility period and corrects a typographical error by adding the type of test referenced in

(i.e., one-sided "t" test with 0.10 alpha error).

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies that applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on March 19, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A

written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-4990 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3910-7]

Open Meeting of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meetings—Negotiated Rulemaking. Committee on Clean Fuels Rules and Guidelines.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), EPA is giving notice of the first meeting of the Advisory Committee to negotiate a rule for reformulated gasoline and labeling of oxygenated gasoline as well as for developing guidelines for oxygenated fuel credit trading programs for inclusion in state implementation plans.

EPA published a "Notice of Intent to Form an Advisory Committee To Negotiate Guidelines and Proposed Regulations Implementing Clean Fuels Provisions" on February 8, 1991 (56 FR 5167). The Notice provided that EPA is considering establishing one or two advisory committees to negotiate issues under the clean fuels provisions of section 211 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. The Notice also announced that a public meeting would be held on February 21 and 22 to consider the issues raised in the notice. It also solicited comments by March 11, 1991, on the issues raised in the Notice and applications or nominations for membership on the negotiating committee.

Because of the short deadlines in the Clean Air Act Amendments of 1990 for these issues, EPA anticipates making its decision with respect to the establishment of a negotiated rulemaking committee very soon after the close of the comment period. In the

event a committee is established, its first meeting will be on March 14 and 15. If a negotiated rulemaking committee is not established, a Notice to that effect will be published.

The purpose of the meeting is to discuss and ratify the organizational protocols by which the committee will operate, organize workgroups and charge them with developing information and recommendations to the committee concerning specific topics, develop the committee's specific agenda for its operations, and begin to consider the substantive issues involved.

The meeting will be open to the public without advance registration.

DATES: The meeting will be held on March 14 from 9 a.m. until 6 p.m. and on March 15 and from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Quality Hotel Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Carol Menninga of EPA's Motor Vehicle Emission Laboratory, Office of Mobile Sources, (313) 668-4575, with respect to issues concerning reformulated fuels, and Alfonso Mannato of EPA's Field Operations and Support Division, Office of Mobile Sources, (202) 382-2667, with respect to issues concerning oxygenated fuels. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Chris Kirtz of EPA's Regulatory Negotiation Project, or one of the Committee's independent facilitators, Philip J. Harter at (202) 887-1033 or Alana S. Knaster at (818) 702-9526.

Dated: February 26, 1991.

Paul Lapeley,

Director, Regulatory Management Division,
Office of Policy, Planning and Evaluation.

[FR Doc. 91-5016 Filed 2-27-91; 1:57 pm]

BILLING CODE 6560-50-M

40 CFR Part 123

[FRL-3910-6]

State of Colorado's Submission of a Substantial Program Revision to its Authorized National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application, public comment period, and public hearing.

SUMMARY: The State of Colorado has submitted its Aquatic Life Biomonitoring Regulation, COLO. ADMIN. CODE title 5, chapter 1002, article 2, section 8.9.7 (5CCR1002-2) (adopted by the Colorado Water Quality Control Commission in November 1988) (hereinafter the Colorado Biomonitoring Regulation) to EPA for review as a revision to the State's authorized National Pollutant Discharge Elimination System (NPDES) program. EPA has determined that the regulation constitutes a substantial revision to Colorado's authorized NPDES program. Accordingly, EPA requests public comment and is providing notice that a public hearing on the submitted regulation will be held pursuant to 40 CFR 123.62(b) and part 25. EPA seeks public comment on whether to approve or disapprove the Colorado Biomonitoring Regulation as a revision to Colorado's authorized NPDES program.

Copies of the Colorado regulation are available for public inspection as indicated below.

DATES: Comments must be received before May 3, 1991. A public hearing has been scheduled for April 19, 1991, at the Hyatt Regency, 1750 Welton Street, Denver, Colorado 80202, from 2 p.m. to 5 p.m. (or later as necessary) and 7 p.m. to 10 p.m. (or later as necessary).

ADDRESSES: Comments should be addressed to Robert J. Burn, U.S. EPA, Region VIII, 8WMC, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Robert J. Burn, (303) 293-1587, at the above address.

SUPPLEMENTARY INFORMATION: Section 402 of the Federal Clean Water Act (CWA) created the NPDES program under which the Administrator of EPA may issue permits for the discharge of pollutants into the waters of the United States under conditions required by the CWA. Section 402(b) allows States to assume NPDES program responsibilities upon approval by EPA. On March 27, 1975, Colorado received approval to assume the NPDES program; on March 4, 1983, the State was authorized by EPA to issue general permits under the NPDES Program.

EPA has issued regulations in 40 CFR part 123 that establish the requirements for NPDES State Programs. Section 123.62 establishes procedures for revision of authorized NPDES State Programs. Under § 123.62(a), a State may initiate a program revision and must keep EPA informed of proposed modifications to its regulatory authority. In January 1990, the State of Colorado submitted its biomonitoring regulation for formal review by EPA. Under

§ 123.62(b)(1), a State program submittal is complete whenever the State submits such documents as EPA determines are necessary under the circumstances. In this instance, EPA has determined that the State submission is complete. Section 123.62(b)(2) requires EPA to issue public notice by publication in the Federal Register and in newspapers having Statewide coverage, and to provide a period of public comment of at least 30 days whenever the Agency determines that a program revision is substantial. EPA has determined that the biomonitoring regulation, which is described below, constitutes a substantial revision to Colorado's NPDES program. Section 123.62(b)(2) also requires EPA to hold a public hearing regarding the proposed revision "if there is significant public interest based on requests received." EPA believes based upon contacts with the State of Colorado and the public in the last two years that there is already substantial public interest in the proposed revision and accordingly has proceeded to schedule a public hearing at this time.

The Colorado Biomonitoring Regulation describes the State's requirements for conducting whole effluent toxicity testing, for establishing effluent limitations in NPDES permits to control whole effluent toxicity, for enforcing established limitations, and for eliminating the cause(s) of the whole effluent toxicity.

Following passage of the Colorado regulation, NPDES permits were drafted by Colorado containing the provisions of the new regulation. Numerous permits were subsequently formally objected to (vetoed) by EPA because they did not satisfy the minimum requirements of the CWA. Formal administrative proceedings on such permits proceed according to 40 CFR parts 123 and 124, and the permits will not be the subject of public comment and hearing under this notice.

On June 2, 1989, EPA promulgated regulations at 40 CFR 122.44(d)(1), which clarify existing requirements for developing water-quality-based effluent limitations. See 54 FR 23868. The regulations require permitting authorities to set whole effluent toxicity limitations where necessary to achieve (as described in the regulation) a numeric criterion for whole effluent toxicity or a narrative criterion within an applicable narrative water quality standard. Section 123.25(15) of the NPDES State Program regulations requires NPDES authorized States to have the legal authority to implement

the requirements of the provisions of § 122.44.

At the close of the public comment period (including the public hearing), the EPA Regional Administrator, with the concurrence of the Associate General Counsel for Water and the Director of the Office of Water Enforcement and Permits, will decide whether to approve or disapprove the Colorado Biomonitoring Regulation as a revision to the Colorado NPDES program. The decision to approve or disapprove will be based upon the requirements of the CWA and 40 CFR part 123. A public hearing to consider the Colorado Biomonitoring Regulation has been scheduled for April 19, 1991, at the Hyatt Regency, 1750 Welton Street, Denver, Colorado 80202, from 2 p.m. to 5 p.m. (or later as necessary) and from 7 p.m. to 10 p.m. (or later as necessary).

The Colorado Biomonitoring Regulation may be reviewed by the public from 8 a.m. to 4 p.m. at the EPA office in Denver, Monday to Friday (excluding holidays), at the address appearing earlier in this notice. Copies of the submittal may be obtained for a fee by contacting Robert J. Burn at the above telephone number or address.

The following are the policies and procedures which shall be observed at the public hearing: (1) Any person may submit written statements or documents for the record; (2) the Presiding Officer(s) may establish reasonable limits on the time allowed for oral statements; (3) the transcript taken at the hearing, together with copies of all submitted statements and documents shall become a part of the record of this proceeding; (4) the hearing record shall be left open until May 3, 1991, as described below, to permit any persons to submit additional written statements or to present views or evidence tending to rebut testimony which was presented at the public hearing; and (5) the Presiding Officer(s) shall have the authority to open and conclude the hearing and to maintain order.

Immediately following the public comment period, a complete hearing record will be prepared. The record will be made available for public review, and copies of the record may be obtained by the public at cost.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record. Statements should summarize any extensive written materials.

All comments or objections received as discussed above, by May 3, 1991, will be considered by EPA before taking final action on the program revision.

Please bring the foregoing to the attention of persons whom you know

will be interested in this matter. All written comments and questions on the hearing should be addressed to Robert J. Burn at the above address or telephone number.

Dated: February 26, 1991.

Lajuana S. Wilcher,
Assistant Administrator for Water,
Environmental Protection Agency.

Dated: February 28, 1991.

James J. Scherer,
Regional Administrator, Environmental
Protection Agency, Region VIII.

[FR Doc. 91-5020 Filed 3-1-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-32, RM-7606]

Radio Broadcasting Services; Chetek, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Chetek Broadcasters proposing the allotment of Channel 29A2 to Chetek, Wisconsin, as that community's first local service. There is a site restriction 2 kilometers (1.3 miles) east of the community to avoid a short spacing to Channel 29B2, New Richmond, Wisconsin. Canadian concurrence will be requested at coordinates 45-19-23 and 91-37-27.

DATES: Comments must be filed on or before April 19, 1991, and reply comments on or before May 6, 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: Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553, (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-32, adopted February 11, 1991, and released February 26, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* 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. 91-4959 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-30, RM-7600]

Television Broadcasting Services; Vanderbilt, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by GRK Productions, Inc., proposing the allotment of Channel 45 to Vanderbilt, Michigan, as that community's first local commercial TV service. Canadian concurrence will be requested for this allotment at coordinates 45-08-42 and 84-39-36.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 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: Garry R. Knapp, GRK Productions, Inc., 7400 South 45 Road, Cadillac, Michigan 49601, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

91-30, adopted February 11, 1991, and released February 27, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* 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

Television broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-5034 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-484; RM-7478]

Radio Broadcasting Services; Kalspell, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition for rule making filed by Skyline Broadcasters, Inc., to allot Channel 292A to Kalspell, Montana, as that community's fourth FM broadcast service. See 55 FR 49661, November 8, 1990. Neither the petitioner nor any other party filed an expression of interest in the channel.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-484, adopted February 11, 1991, and released February 27, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-5030 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-31, RM-7535]

Radio Broadcasting Services; Kershaw, SC and Waxhaw, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jeffrey C. Sigmon seeking the substitution of Channel 291C3 for Channel 291A at Kershaw, South Carolina, reallocation of the channel from Kershaw to Waxhaw, North Carolina, and modification of petitioner's construction permit to specify Waxhaw as the station's community of license. Channel 291C3 can be allotted to Waxhaw in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 kilometers (6.9 miles) southeast to avoid short-spacings to Station WRDX, Channel 293C, Salisbury, North Carolina, and the pending application of Station WZLL, Channel 291C1, Toccoa, Georgia (BPH-900301IE), as well as to accommodate petitioner's desired transmitter site. The coordinates for Channel 291C3 at Waxhaw are North Latitude 34-51-38 and West Longitude 80-39-03. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 291C3 at Waxhaw or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 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: Stephen T. Yelverton, Maupin Taylor Ellis & Adams, P.A., 3201 Glenwood Avenue, Raleigh, North Carolina 27612-5008 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-31, adopted February 11, 1991, and released February 27, 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. 91-5031 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-28, RM-7584]

Radio Broadcasting Services; Abilene and Colorado City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Sure Broadcasting, Inc., licensee of Station KHXS(FM), Channel 292A, Abilene,

Texas, requesting the substitution of Channel 292C2 for Channel 292A at Abilene, and the modification of its license accordingly. To accommodate the Abilene substitution, petitioner also requests the substitution of Channel 291A for Channel 292A at Colorado City, Texas, and the modification of Station KAUM(FM)'s license accordingly. Both channels can be allotted in accordance with the Commission's minimum distance separation requirements at their respective transmitter sites. Site coordinates for Channel 292C2 at Abilene are 32-28-34 and 99-42-22. Site coordinates for Channel 291A at Colorado City are 32-23-15 and 100-53-33. Mexican concurrence will be requested for the Colorado City substitution.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 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: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street NW., Washington, DC 20005 (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. 91-28, adopted February 11, 1991, and released February 27, 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. 91-5032 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-29, RM-7575]

Radio Broadcasting Services; South Burlington, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Atlantic Ventures of Vermont, L.P. ("petitioner"), licensee of Station WXXX(FM), Channel 237A, South Burlington, Vermont, seeking substitution of Channel 238C3 for 237A and modification of its license accordingly. Channel 238C3 can be allotted to South Burlington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.6 miles) southwest at the petitioner's desired site to avoid prohibitive interference to Stations CBOC(FM), Channel 238A, Cornwall, Ontario, and CFLX(FM), Channel 238A, Sherbrook, Quebec, Canada. The proposed allotment will have to be specially negotiated with Canada. The coordinates for the allotment of Channel 238C3 at South Burlington, Vermont, are North Latitude 44-26-54 and West Longitude 73-13-05. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 238C3 at South Burlington or require the petitioner to demonstrate the

availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 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: Lawrence Bernstein, Esq., Brinig & Bernstein, 1818 N Street, NW., suite 200, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-29, adopted February 11, 1991, and released February 27, 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. 91-5033 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 56, No. 42

Monday, March 4, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation and Committee on Rulemaking; Public Meetings

This notice of committee meetings is given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman, (202) 254-7020, at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Committee on Regulation

Date: Wednesday, March 20, 1991.

Time: 3:15 p.m. to 6:00 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

Contact: David Pritzker, (202) 254-7065.

Agenda: The committee will meet to discuss a new project concerned with procedures for making determinations in antidumping and countervailing duty cases, based on a study by Professors John H. Jackson, University of Michigan Law School and William J. Davey, University of Illinois at Urbana-Champaign.

Committee on Rulemaking

Date: Tuesday, March 5, 1991.

Time: 4:30 p.m. to 6:30 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

Contact: Kevin Jessar, (202) 254-7020.

Agenda: The committee will meet to discuss two new projects, the first of which deals with the use of non-rule rulemaking. The consultant to this project is Professor Robert A. Anthony, George Mason University Law School. The second project deals with the National Labor Relations Board's first rulemaking. The consultant to this project is Professor Mark H. Grunewald, Washington and Lee University.

Dated: February 27, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-5099 Filed 3-1-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 22, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Animal and Plant Health Inspection Service.

Poultry Affected by Salmonella Enteritidis

APHIA 8062, 8004, VS 20-1, SE 20-1, 20-3

Recording; On occasion
State or local governments; Farms;
Federal agencies or employees;
658,739 responses; 61,147 hours
Ronald J. Day (301) 436-7737

New Collection

• Economic Research Service.
Cost of Foodborne Campylobacteriosis
One time survey
Individuals or households; 201
responses; 68 hours
Tanya Roberts (202) 219-0864

Extension

• Forest Service.
Fuelwood and Post Assessment in
Selected States
Annually (but not in each state)
Individuals or households; Small
businesses or organizations;
5,966 responses; 597 hours
W. Brad Smith (FTS) 777-5132

• Foreign Agricultural Service.
Certificate of Quota Eligibility
FAS-961
On occasion
Businesses or other for-profit; 600
responses; 100 hours
Cleveland Marsh (202) 475-5676

Reinstatement

• Food and Nutrition Service.
7 CFR part 250—Food Distribution
Regulations
Recordkeeping; On occasion; Monthly;
Quarterly; Semi-annually;
Annually; Biennially; other
State or local governments; Federal
agencies or employees;
Non-profit institutions; 29,105 responses;
54,701 hours
Diane Berger (703) 756-3660

Donald E. Hulcher

Deputy Departmental Clearance Officer.

[FR Doc. 91-5003 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Determination; Recalculation of 1988 and 1989 Barley Deficiency Refunds

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determination.

SUMMARY: This notice sets forth determinations required by section 405 of the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act)

relating to the recalculation of 1988 and 1989 barley deficiency payments which were made by the Commodity Credit Corporation (CCC) under the 1988 and 1989 barley price support and production adjustment programs.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Nell Tucker, Agriculture Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, United States Department of Agriculture, room 6756 South Building, Washington, DC 20013, (202) 447-5103.

SUPPLEMENTARY INFORMATION: This notice 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 "nonmajor."

Notice and Determination

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.

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 Program to which this rule applies are: Commodity Loans and Purchases—10.051; Feed Grain Production Stabilization—10.055, as found in the catalog of Federal Domestic Assistance.

Background

Section 107C of the Agricultural Act of 1949, as amended (The 1949 Act),

provides for the 1988 and 1989 wheat and feed grain programs, that CCC would make available in advance, payments equal to not less than 40 percent nor more than 50 percent of the final projected deficiency payments which were estimated to be earned by producers participating in said programs. With respect to barley, CCC has historically made advance payments based on an "all-barley" price basis, which included estimated market prices for malting barley and non-malting barley. Using this basis, 1988 barley final deficiency payments were originally estimated to be \$.76 per bushel and 1989 barley final deficiency payments were originally estimated to be \$.23 per bushel. Advance payments of \$.304 and \$.115 were issued in 1988 and 1989, respectively. However, due primarily to severe drought conditions in major barley producing areas of the United States, the actual final deficiency payments were zero in both 1988 and 1989.

A portion of the increase in barley prices was attributable to higher malting barley prices which increased proportionately higher than non-malting barley prices. As a result of the increase in malting barley prices, plus an increase in the proportion of all-barley production being used for malting, the all-barley price was higher and deficiency payments were reduced.

In response to this occurrence, section 405 of the 1990 Act provides as follows:

Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall calculate, the amount of the refund of any advance deficiency payment a producer of barley who participated in the 1988 or 1989 Federal barley price support program would be required to make pursuant to section 107C of the Agricultural Act of 1949 based on a formula which excludes malting barley from the market price calculations of barley used to determine the amount of refund of the advance deficiency payment required of the producer.

Accordingly, pursuant to section 405 of the 1990 Act, the following determinations have been made:

Final Determinations

1. The formula for recalculating 1988 and 1989 final barley deficiency payments which excludes malting barley from the market price calculations used to determine barley deficiency payments is as follows:

(a) For each of the 1988 and 1989 crop years respectively, compute the production with respect to which barley deficiency payments are made by multiplying the (i) Farm program payment acreage times (ii) the farm program payment yield times (iii) the producer's share of the crop and subtracting any production for which a disaster payment was made in accordance with The Disaster Assistance Act of 1988 (The 1988 Act) or The Disaster Assistance Act of 1989 (The 1989 Act), respectively.

(b) Compute the revised barley deficiency payment by multiplying the deficiency production for payment times the recalculated payment rates for the crop year which is \$.22 per bushel for 1988 and \$.40 per bushel for 1989.

(c) For those producers who qualified for forgiveness of unearned advance deficiency payments under either The 1988 Act or 1989 Act, the amount of payments that is forgiven for the crop year shall be recomputed, when applicable, by: (i) Dividing the originally calculated forgiveness by the original forgiveness rate, (ii) computing a revised rate that is equal to the difference between the original advance payment rate and the payment rate that is based on the average market price for feed barley, or \$.084 per bushel for 1988, and (iii) multiplying the result of (i) by the result of (ii). Forgiveness is not applicable when using the recalculated rate for 1989.

(d) Compute the amount of refund, if any, that would have been made by subtracting the sum of the result of (b) plus the result of (c) from the payment advanced.

2. The totals of the recalculation for all participating barley producers are as follows:

Year	Total No. producers	Tot. original amt. due	Recalculated amt. due	Difference
1988	114,929	\$76,915,221	¹ \$38,338,318	\$38,576,903
1989	95,985	24,884,500	¹ 1,250,447	23,634,053

¹ Includes refunds due on bushels for which disaster payments were made.

The per bushel rates used in the recalculations are as follows:

Year	1988	1989
Target Price.....	\$2.51	\$2.43
5 Month Average Market Price, Feed Barley.....	2.29	2.03
Difference.....	.22	.40
Advance Rate.....	.304	.115

3. It has been determined that the formula set forth above shall not be used to determine refunds for affected producers. This determination is based upon several reasons. First, since the implementation of the concept of barley deficiency payments in 1974, all producers of barley have been able to enroll in the barley program whether or not the barley that was being grown was malting barley or non-malting barley. Accordingly, all barley producers who enrolled in the 1988 and 1989 programs were treated in the same manner as in prior years. Since producers of barley which was sold for malting purposes did, in fact, obtain higher returns from the market for the barley which was marketed, it has been the position of the Department that such returns should be included in the final deficiency payment calculations. To not include such returns results in a double premium to producers who marketed malting barley. Further, to alter the final deficiency payment rate after the fact, significantly degrades the integrity of not only the barley program but all other CCC programs pursuant to which deficiency payments are calculated; producers who made decisions to enroll, or not to enroll, in these programs must be given firm announcements so that these decisions can be made without the possibility of later changes. Also, the concept of excluding high value varieties of a commodity from the calculations of the market value of that commodity carries forth major implications for other target price commodities and as such has budget implications beyond barley.

Finally, while the House-passed version of the 1990 Farm Bill gave the Secretary discretion to exclude malting barley prices from the deficiency payment calculations for 1988 or 1989 crop barley and to make refunds and the Senate-passed version made this discretionary authority mandatory, the final bill passed by both the House and the Senate made the refunding of 1988 and 1989 barley deficiency payments (based on the new formula) wholly discretionary in order to reduce the cost of the 1990 Farm Bill and to meet the budget targets required by the Budget Committees.

Signed this 26 day of February, 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, CCC.

[FR Doc. 91-5040 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Appeal Exemption; Eldorado National Forest, Placerville, CA

ACTION: Notice of exemption from appeal, Placerville Ranger District, Tractor Insect Salvage, Placerville Ranger District, Eldorado National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objective is to reduce the fire hazard, to recover the value of the timber and to rehabilitate the affected area. The Placerville Ranger District Tractor Insect Salvage Environmental Assessment (EA) is currently being prepared for compartments scattered throughout the Placerville Ranger District, Eldorado National Forest, which is located east of the community of Placerville, California.

There are higher than normal levels of tree mortality occurring throughout the Eldorado National Forest as a result of four years of below normal precipitation, with a fifth drought year expected. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands, predisposing them to attack by bark beetles. True fir stands above 5000 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized, its value to be recovered, and the fire hazard to be reduced.

The Forest Supervisor has determined through preliminary environmental analysis, which included public scoping, that there is good cause to expedite this project. The analysis area is approximately 84,000 acres (gross) with at least 8,400 acres visibly adversely affected at this time. Up to 50 percent or more of the trees in some stands within the analysis area are dead or dying. The Forest is proposing eight timber sales using tractor harvest systems. It is estimated that approximately 15.7 million board feet (MMBF) could be salvaged from this analysis area. It is estimated that the total volume harvested could go as high as 30 MMBF

if mortality increases due to the continuing drought and bark beetle infestation. The management direction for all the compartments in this proposal is established in the Eldorado National Forest Land and Resource Management Plan, approved by the Regional Forester on January 6, 1989, which includes intensive forest management practices on commercial lands.

There is no new road construction proposed with these eight sales. Approximately 10 miles of road reconstruction may occur where necessary to protect resource values. All of the proposed sales are outside of previously identified roadless areas.

Several pair of spotted owls, ED-5, ED-23, ED-25, ED-26, ED-27, ED-38, ED-49, ED-79, ED-98, and ED-99, are located in the analysis area and are within the current Spotted Owl Habitat Area (SOHA) network on the Eldorado. Approximately 14,600 acres of old growth exist in the analysis area. Of the 14,600 acres, approximately 475 acres of old growth may be entered under this salvage proposal.

Regional entomologists have analyzed the situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sales economically infeasible because of higher than normal harvesting costs. Through timber sales, fuel treatments can be accomplished (or deposits collected to accomplish them) to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-Vandenburg (K-V) funds to restore forest values being affected by extensive tree mortality.

The decision for the analysis area is scheduled to be issued in late February, 1991. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15-20 days for discretionary review by the Chief of the Forest Service), there would be a loss of value of the timber due to deterioration. This loss of timber value would create the potential that the sales would not sell. The total estimated value of the

standing dead mortality is \$1,600,000, of which approximately \$400,000 would be returned to counties from 25 percent receipt funds. In addition, the fire hazard would not be reduced if the dead timber was not removed. Further, there is significant increased public awareness of the significance of the increased insect mortality.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decisions relating to the harvest and restoration of the lands affected by drought-induced timber mortality in the Placerville Ranger District Tractor Insect Salvage analysis area on the Placerville Ranger District, Eldorado National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 (415) 705-2648, or Jerald N. Hutchins, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA, 95667 (916) 622-5061.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal will be documented in the Placerville Ranger District Tractor Insect Salvage EA. Public participation in the analysis was solicited through a public meeting held December 5, 1990, in Placerville, California, through a news release issued also in December of 1990, and through mailings to publics owning property adjacent to the Forest, holders of special-use permits and others known to be interested in timber management on the Eldorado National Forest. Comments received were considered in the issues, range of alternatives and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the Placerville Ranger District, Camino, California, and in the Forest

Supervisor's Office, Placerville, California.

The analysis indicates that up to 15.7 MMBF, primarily mixed conifer and true fir, valued at up to \$1,600,000 have been currently killed by the combined effects of drought and bark beetle attack. Up to 70 percent of the merchantable volume can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying harvest or not harvesting this timber could result in a loss of up to \$400,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in El Dorado, Amador, Placer, and/or Alpine Counties.

Based on the analysis completed thus far, the environmental assessment will document that salvage harvesting can be conducted while protecting other resource values, such as wildlife habitat, soil productivity, watershed valued, visual quality, air quality, recreation, and public safety. No wetlands, wilderness areas, Spotted Owl Habitat Areas, or threatened or endangered species would be affected by the proposed projects. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources funded with K-V monies. These delays would result in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels. In addition, there is significant potential to increase the public concern related to failure to harvest the insect mortality as soon as possible.

Dated: February 26, 1991.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 91-4986 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-11-M

Blue/Ray Multiple Resource Management Project, Klamath National Forest, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to implement resource projects on the Salmon River Ranger District, Klamath

National Forest, Siskiyou County, California.

DATES: Comments concerning the scope of the analysis must be received by March 25, 1991.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Michael P. Lee, District Ranger, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, Attn: Blue/Ray E.I.S.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Don Garringer Natural Resource Planner or Roger Siemers, Natural Resource Planning Forester, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, phone (916) 467-5757.

SUPPLEMENTARY INFORMATION: Barbara Holder, Forest Supervisor, Klamath National Forest is the responsible official.

The proposed action is to help develop different management alternatives within the current direction of the Salmon River Multiple Use Plan. The following resource values will be considered for protection or improvement:

- (1) Water quality (cumulative watershed effects)
- (2) Fisheries and wildlife
- (3) Archeology
- (4) Visual quality objectives
- (5) Soils and geologically sensitive areas
- (6) Threatened, sensitive and endangered species
- (7) Timber
- (8) Economics
- (9) Fuels management
- (10) Recreation
- (11) Cultural resources

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

6. Determination of potential cooperating agencies and task assignments.

The Forest Supervisor will hold a public scoping meeting in Etna, California, at the headquarters of the Salmon River Ranger District, Klamath National Forest, at 7 p.m., March 4, 1991.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 12, 1992. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the area encompassed by the proposed Blue/Ray Multiple Resource planning project participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon v. Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS).

The FEIS is scheduled to be completed by January 9, 1993. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: February 22, 1991.

Ken Slater,

Timber Management Officer.

[FR Doc. 91-4996 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-11-M

I-Am-Up Multiple Resource Management Project, Klamath National Forest, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to implement resource projects on the Salmon River Ranger District, Klamath National Forest, Siskiyou County, California.

DATES: Comments concerning the scope of the analysis must be received by March 25, 1991.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Michael P. Lee, District Ranger, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, Attn: I-Am-Up E.I.S.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Bill Bailey, Natural Resource Planner or Roger Siemers, Natural Resource Planning Forester, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, phone (916) 467-5757.

SUPPLEMENTARY INFORMATION: Barbara Holder, Forest Supervisor, Klamath National Forest is the responsible official.

The proposed action is to help develop different management alternatives within the current direction of the Salmon River Multiple Use Plan. The following resource values will be considered for protection or improvement:

(1) Water quality (cumulative watershed effects)

- (2) Fisheries and wildlife
- (3) Archeology
- (4) Visual quality objectives
- (5) Soils and geologically sensitive areas
- (6) Threatened, sensitive and endangered species
- (7) Timber
- (8) Economics
- (9) Fuels management
- (10) Recreation
- (11) Cultural resources

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

6. Determination of potential cooperating agencies and task assignments.

The Forest Supervisor will hold a public scoping meeting in Etna, California, at the headquarters of the Salmon River Ranger District, Klamath National Forest, at 7 p.m., March 11, 1991.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 12, 1992. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the area encompassed by the proposed I-Am-Up Multiple Resource planning project participate at that time. To be most helpful, comments on the DEIS should be as specific as possible

and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS), *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by January 9, 1993. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Ken Slater,

Timber Management Officer.

[FR Doc. 91-4997 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrical Administration

Co-Mo Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact related to the construction of the proposed Lake Branch Facility to be located south of Laurie in Camden County, Missouri.

SUMMARY: Notice is hereby given that

the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations (40 CFR parts 1500-1508) and the Rural Electrification Administration Environmental Policies and Procedures (7 CFR part 1794), has prepared an environmental assessment and made a finding of no significant impact with respect to the construction of the Lake Branch Facility in Camden County, Missouri. Co-Mo Electric Cooperative (P.O. Box 220, Tipton, Missouri 65801) has requested the Rural Electrification Administration's approval to construct the project in order for it to continue to adequately serve the needs of its consumer/members. The proposed Lake Branch Facility is planned as an office, warehouse and materials storage complex.

FOR INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: The proposed project consists of a 4,600 square foot office building, a 13,061 square foot warehouse, a 1,400 square foot equipment building, a 3 acre fenced material yard, a transformer dock, pole racks, a fuel service island, a drive-in window, 10 office employee parking spaces and 15 customer parking spaces.

Alternatives considered were constructing the facility as proposed and no action. The Rural Electrification Administration has concluded that there is a demonstrated need for the project. Therefore its preferred alternative is approval of construction of the Lake Branch Facility as proposed.

Copies of the environmental assessment and finding of no significant impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or at the office of Co-Mo Electric Cooperative, Highway 5, South, Tipton, Missouri 65801.

Dated: February 22, 1991.

Approved:

John H. Arnesen,

Assistant Administrator—Electric Rural Electrification Administration, United States of America.

[FR Doc. 91-5007 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-039]

Canned Bartlett Pears From Australia; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on canned bartlett pears from Australia. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: David Levy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, the Department of Treasury published an antidumping finding on canned bartlett pears from Australia (38 FR 7566). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objection should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by

March 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 26, 1991.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 91-4992 Filed 3-1-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-570-002]

Chloropicrin From the People's Republic of China, Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published an antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 26, 1991.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 91-4993 Filed 3-1-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by various parties to the proceeding, the Department of Commerce has conducted administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States, Victor Company of Japan (Victor), and the periods August 19, 1983 through February 28, 1986. The reviews indicate zero dumping margins for Victor during these periods.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

In response to the Department of Commerce's ("the Department") notices of opportunity to request administrative

reviews of the antidumping finding on Japanese televisions, various parties to the proceeding requested these administrative reviews. We published notices of initiation of the antidumping duty administrative reviews on July 9, 1986 (51 FR 24883) for the fifth and sixth reviews and on April 18, 1986 (51 FR 13273) for the seventh review. As required by section 751 of the Tariff Act of 1930 (the Tariff Act), the Department has now conducted these administrative reviews. On February 11, 1991, the Department of Commerce published in the Federal Register (54 FR 5392) the final results of our last administrative review, covering Victor and the periods March 1, 1987 through February 28, 1990, (36 FR 4597, March 10, 1971).

Scope of the Review

Imports covered by the reviews are shipments of television receiving sets, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter of Japanese television receivers, monochrome and color, Victor, and the periods August 19, 1983 through February 28, 1986.

United States Price

In calculating United States price (USP) the Department used exporter's sales price (ESP) as defined in section 772 of the Tariff Act. USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments, as

applicable, for ocean freight, marine insurance, U.S. duties, U.S. and Japanese inland freight, inland freight insurance, U.S. and Japanese brokerage fees, Japanese customs clearance fees, wharfage, export license fees, forwarding and handling charges, export selling expenses incurred in Japan, discounts, royalties, rebates, and the U.S. subsidiary's selling expenses. We accounted for taxes imposed in Japan, that were rebated or not collected by reason of the exportation of the merchandise to the United States, by multiplying the ex-factory price of the televisions sold in the United States by the tax rate and adding the result to the USP.

Foreign Market Value

In calculating foreign market value (FMV) the Department used home market prices to unrelated purchasers, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold to provide a basis for comparison. We made adjustments to the ex-factory or delivered prices for inland freight, brokerage and handling, insurance, rebates, discounts, credit, warranties, advertising, sales promotion, royalties, and differences in physical characteristics of the merchandise and packing. We deducted indirect selling expenses up to the amount of U.S. commissions to unrelated parties and U.S. indirect selling expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences, where appropriate. No other adjustments were claimed or allowed.

We used constructed value when there were no contemporaneous sales of such or similar home market models. We calculated constructed value as the sum of material and fabrication costs, general expenses, profit, and the cost of U.S. packing. Since Victor's general expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual general expenses. Since actual profit was less than eight percent of the sum of the material costs, fabrication costs, and general expenses, we used the eight percent statutory minimum, as provided by section 773 of the Tariff Act.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Review No.	Period of review	Margin (%)
Victor.....	5	8/19/83-3/31/84	0
Victor.....	6	4/01/84-2/28/85	0
Victor.....	7	3/01/85-2/28/86	0

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs/written comments from parties to the proceeding may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent, based on the margin for Victor in the eleventh review, will be required for Victor. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Sharp, or Toshiba, the cash deposit will continue to be the same as the rates published in the final results of the last administrative reviews for these firms (56 FR 5392, February 11, 1991). For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of covered merchandise occurred after February 28, 1990, and who is unrelated to Victor or any previously reviewed firm, a cash deposit of 35.40 percent shall be required. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome or color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 22, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-4994 Filed 3-1-91; 8:45 am]
BILLING CODE 3510-DS-M

European Community Common Approach to Standards, Testing and Certification in 1992

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of request for public comment.

SUMMARY: The Federal Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 (the "Committee") was established on February 23, 1990 to advise the Secretary of Commerce for the purpose of keeping him adequately informed regarding EC'92 standards-related activities in order for him to: (a) Identify those standards, testing procedures, and certification processes which may substantially affect the commerce of the United States; (b) represent U.S. interests to EC organizations; and (c) develop strategies for improving the coordination and cooperation of U.S. Federal, State, local and private sector standards activities.

The Committee has held two meetings on October 10, 1990 and January 8, 1991. As part of the Committee's mandate to advise the Secretary of Commerce on EC standards-related activities, the Committee identified several key issues in the area of standards, testing and certification which formed the basis of draft issue papers developed by Committee working groups. The issue papers will provide the basis for a final report to the Secretary later in the spring. Copies of the final two draft issue papers are now available for public review and comments will be accepted until March 22, 1991. The two issue papers discuss the appropriate role of the federal government in international standards activities and possible adjustments to be made in U.S. testing and certification practices. Copies of the papers will be available from Charles M. Ludolph, Director, Office of European Community Affairs, room H3038, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377-5276.

DEADLINE FOR COMMENTS: Interested members of the public are invited to submit their comments to Charles Ludolph in the Office of European Community Affairs, Telephone (202) 377-5276; Fax (202) 377-2155. The deadline for submission of comments is March 22, 1991.

Dated: February 20, 1991.

Charles M. Ludolph,
Director, Office of European Community
Affairs.

[FR Doc. 91-4991 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands

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

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the approval of Amendment 1 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (FMP). This amendment defines overfishing for 17 crab stocks in the Bering Sea/Aleutian Islands area using a constant fishing mortality rate. Overfishing is defined as any rate of fishing mortality in excess of F_{msy} for king and Tanner crab stocks in the Bering Sea/Aleutian Islands management area.

EFFECTIVE DATE: February 26, 1991.

ADDRESSES: Copies of the amendment and the environmental assessment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the North Pacific Fishery Management Council (Council) on January 17, 1989. The Secretary of Commerce (Secretary) approved the FMP on June 2, 1989 (54 FR 29080; July 11, 1989). The FMP culminated 10 years of effort by the Council to address the concerns of various user groups while at the same time acknowledging more than 20 years of management of crab by the State of Alaska (State). The FMP was written as a cooperative State-Federal FMP to avoid State-Federal coordination problems. The FMP contains a general management goal and identifies seven management objectives and relevant management measures required to meet the objectives. The FMP established three categories of management measures (1) Fixed measures implemented by the State that requires an FMP amendment to be changed; (2) measures that the State may implement and amend, subject to Federal criteria

specified in the FMP, and enforce against State-registered vessels in the exclusive economic zone (EEZ); and (3) measures that the State may implement and amend, without specific Federal criteria specified in the FMP, and enforce against State-registered vessels in the EEZ. Federal oversight of State management of the king and Tanner crab fisheries is provided through Secretarial review to determine if an action is consistent with the FMP, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable Federal law. Federal oversight also is provided through a review and appeals procedure for both State preseason and in-season actions and formation of a Council Crab Interim Action Committee.

A notice of availability for Amendment 1 was published in the Federal Register on November 30, 1990 (55 FR 49673), and the public was invited to comment on the amendment. Amendment 1 to the FMP establishes an overfishing definition for king and Tanner crab in the Bering Sea/Aleutian Islands area to meet the requirements of 50 CFR part 602. Overfishing is defined for each king and Tanner crab stock in the Bering Sea/Aleutian Islands area, for which sufficient data exist, as the level of commercial harvest from directed (pot) and non-directed (trawl and pot) fisheries resulting in a fishing mortality (F) value that exceeds the fishing mortality rate that would yield the maximum sustainable yield (MSY) known as F_{msy} .

The amount of scientific information available for defining overfishing for the king and Tanner crab stocks in the Bering Sea/Aleutian Islands area is variable. Three different approaches were used to establish the above overfishing definition for the crab stocks based on the type of data available. The Council crab FMP team will monitor and reassess the data available for determining overfishing for the crab stocks through preparation of the Stock Assessment and Fishery Evaluation (SAFE) report or annual report as required by the FMP.

Some stocks only have available historical catch, sporadic inseason catch and effort, as well as mortality data. No population estimates are made for these stocks, so estimates for F_{msy} are unavailable. Overfishing for these stocks is defined as a fishing mortality rate in excess of F_{msy} where the maximum allowable fishing mortality rate is estimated to equal the natural mortality rate (M) of mature male crab. Based on the best estimates of natural mortality rate, the maximum allowable

fishing mortality rate for these stocks is 0.3.

Estimates of inseason fishing mortality are difficult to calculate for stocks with limited data on sporadic catch and effort. Various methods may be used to determine fishing mortality rates on these stocks that do not have population estimates. First, the Leslie method (Leslie and Davis, 1939, *Journal of Animal Ecology* 8:94-113) may be used if sufficient inseason fishery performance data of catch per unit effort (CPUE) and cumulative catch are available to estimate population abundance of legal male crab. The ratio of catch of legal male crab to the population abundance estimate of the legal male crab may be used to estimate the fishing mortality rate of legal male crab. This calculated rate then may be compared with the maximum allowable fishing mortality rate to evaluate overfishing. Second, an estimate of fishing mortality rate based on the ratio of CPUE of legal crab to CPUE of mature crab may be calculated. Data on CPUE of both legal and mature crab are available only from fisheries with onboard observers. During a short fishery, abundance of sublegal mature crab should not change and the reduction in the legal/mature ratio could be used to estimate the fishing mortality rate. A correction for natural mortality of sublegal mature crab would be necessary for long fisheries. Third, an estimate of fishing mortality rate based on proportionate change in average weekly CPUE may be calculated. Weekly average CPUE may be compared to determine if a proportionate reduction in CPUE equal to the maximum allowable fishing mortality rate ($F=M$) has occurred. Data on CPUE would be available only in those fisheries with onboard observers or detailed fish ticket information. For unobserved fisheries with fish ticket data, only fishing mortality on legal male crabs can be estimated. Other methods may be employed that provide increased precision and accuracy in estimating fishing mortality.

Some stocks have available historical catch, continuous inseason catch and effort, as well as mortality data. While these stocks have directed fisheries, no population estimates are made for these stock; therefore, estimates of F_{msy} are unavailable. Overfishing for these stocks is defined as a fishing mortality rate in excess of F_{msy} where the maximum allowable fishing mortality rate for these stocks is estimated to equal the natural mortality rate of mature male crab. Based on the best estimates of natural mortality rate, the

maximum allowable fishing rate for these stocks is 0.3.

For stock with directed fisheries, the Leslie method may be used with inseason fishery performance data (CPUE and cumulative catch) to estimate population abundance of legal male crab. The ratio of catch of legal make crab to the population abundance estimate of legal male crab may be used to estimate the fishing mortality rate of legal male crab. This calculated rate may then be compared with the maximum allowable fishing mortality rate to evaluate overfishing. Other methods may be employed that provide increased precision and accuracy in estimating actual fishing mortality.

Some stocks have available historical catch, continuous inseason catch and effort, as well as stock assessment, stock-recruitment, growth, maturity, and mortality data. Overfishing for these stocks is defined as a fishing mortality rate in excess of F_{msy} where the maximum allowable fishing mortality rate for these stocks cannot exceed F_{msy} estimated as $F_{0.1}$, based on the size of first maturity for male crabs. Based on the work of Clark (Unpublished manuscript, International Pacific Halibut Commission, Seattle, Washington, 1990), it is assumed that $F_{0.1}$ is equal to or less than F_{msy} . The exploitation rates associated with $F_{0.1}$ for these stocks were estimated by standard yield-per-recruit methods to be 0.4 for king crab stocks and 0.3 for each species of Tanner crab. Guideline harvest levels are estimated annually for these stocks; therefore, the fishing mortality rate is established prior to a fishery. Current levels of exploitation were compared to fishing mortality rates that would yield MSY. Based on the analysis, NMFS does not expect that fishing mortality on these crab stocks will exceed F_{msy} .

The overfishing definition presented in Amendment 1 for the crab stocks in the Bering Sea/Aleutian Islands management area provides a set of constraints that keeps the stock population levels from falling below a point of no return and ensures the preservation of a stock's long-term reproductive capacity. Commercial fishing mortality on the crab stocks managed under the FMP should remain sufficiently low in the future so that overfishing should not occur under the current management program. Protection is achieved by preventing fishing mortality rates in excess of F_{msy} .

Public Comments

No comments were received during the comment period which ended on January 28, 1991.

Classification

The Regional Director has determined that Amendment 1 to the FMP is necessary for the conservation and management of the Bering Sea and Aleutian Islands crab fisheries, and that this amendment is consistent with the Magnuson Act and other applicable law. A copy of Amendment 1 may be obtained from the Council at the above address.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of Amendment 1 approval. A copy of the EA may be obtained from the Council at the above address.

Because this amendment requires no implementing regulations, 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of amendment approval.

This amendment does not contain collection of information requirements subject to the Paperwork Reduction Act.

The Council determined that this amendment is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period; therefore, consistency is automatically inferred.

This amendment does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

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

Dated: February 26, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 91-5028 Filed 3-1-91; 9:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability of Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected

inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist Center for the Utilization of Federal Technology.

Department of Agriculture

SN 7-603,505

Soil Moisture Tube extraction Device

SN 7-608,919

Process for Manufacture of Non-Bleeding Maraschino Cherries

SN 7-627,470

Anionically Dyeable Smooth-Dry Crosslinked Cellulosic Material Created by Treatment of Cellulose with Reactive Swelling Agents and Nitrogen Based Compounds

Department of Health and Human Services

SN 7-264,976

Screening for Tay-Sachs Disease with Cloned DNA for Beta-hexosaminidase

SN 7-362,357

Microwave Induced Plasma Torch with Tantalum Injector Probe (As An Ion Source for Mass Spectrometry)

SN 7-502,035

A Rapid, Sensitive and Specific Test for Detecting Pathogenic Bacterium, *Vibrio Vulnificus*

SN 7-530,165

Cloned Human Cripto Gene and Applications Thereof (New Tumor Specific Marker for Human Colon Cancer)

SN 7-531,317

Nucleotide, Deduced Amino Acid Sequence, Isolation and Purification of Heat-Shock Chylamidal Proteins

SN 7-531,950

Monoclonal Antibodies for Identification and Preparation of raf-1 Oncoprotein

SN 7-532,327

A Protective Vaccine (For Bordetella

- pertussis or Bordetella
Bronchiseptica)
SN 7-535,206
DNA Segment Encoding a Natural
Killer Cell Receptor
SN 7-541,032
Treatment of Mood Disorders with
Functional Antagonists of the
Glycine/NMDA Receptor Complex
SN 7-546,141
Labeled Resiniferatoxin,
Compositions Thereof, And
Methods For Using The Same
SN 7-548,714
A cDNA encoding the Rat D,
Dopamine Receptor Linked to
Adenylyl Cyclase Activation and
Expression of the Receptor Protein
in Plasmid-Transfected Cell Lines
SN 7-551,353
Gossypol for the Treatment of Cancer
(Particularly Adrenal Cancer)
SN 7-551,521
Treatment of a Microbial Infection
with Drugs Containing Para-
Acetamidobenzoic Acid (Treatment
of Pneumocystis Carinii in AIDS
and Other Immunosuppressed
Patients)
SN 7-551,522
The Novel Use of Intravenous
Immunoglobulin in the Treatment of
Complement-Mediated Diseases
SN 7-554,837
Plasmodium Vivax and Plasmodium
Knowlesi Duffy Receptor (Malaria
Vaccine Candidate Based on the
Duffy Binding Receptor)
SN 7-556,503
Shipping Oasis (A Spill-Proof Water
Reservoir for Animals)
SN 7-571,910
Antimicrobial and Antiviral Bis-
Adamantanamine Compounds
SN 7-592,489
Low-Cost Ultrasonic Nebulizer for
Atomic-Spectrometry
SN 7-607,742
Test for Virulent Revertants in
Attenuated Live Vaccines

[FR Doc. 91-5000 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 18 April 1991 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 22 February 1991.
Charles H. Atherton,
Secretary.

[FR Doc. 91-4999 Filed 3-1-91; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 2, 1991; Tuesday, April 9, 1991; Tuesday, April 16, 1991; Tuesday, April 23, 1991; and Tuesday, April 30, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from

officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: February 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4965 Filed 3-1-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amendment of a System of Records.

SUMMARY: The Defense Logistics Agency proposes to amend a record system in its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on April 3, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100. Telephone (703) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the *Federal Register* as follows:

- 50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
- 50 FR 51898, Dec. 20, 1985
- 51 FR 27443, Jul. 31, 1986
- 51 FR 30104, Aug. 22, 1986
- 52 FR 35304, Sep. 18, 1987
- 52 FR 37495, Oct. 7, 1987
- 53 FR 04442, Feb. 18, 1988
- 53 FR 09965, Mar. 28, 1988
- 53 FR 21511, Jun. 8, 1988
- 53 FR 26105, Jul. 11, 1988
- 53 FR 32091, Aug. 23, 1988
- 53 FR 39129, Oct. 5, 1988
- 53 FR 44937, Nov. 7, 1988
- 53 FR 46708, Dec. 2, 1988
- 54 FR 11997, Mar. 23, 1989

55 FR 21918, May 30, 1990 (DLA Address Directory)
 55 FR 32284, Aug. 8, 1990
 55 FR 32947, Aug. 13, 1990
 55 FR 42755, Oct. 23, 1990
 55 FR 53178, Dec. 27, 1991

The amended system is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record system being amended is set forth below, followed by the system notice, as amended, published in its entirety.

Dated: February 26, 1991.

L.M. Bynum,
 Alternate OSD Federal Register Liaison
 Officer, Department of Defense.

S322.01 DMDC

System name:

DoD Job Opportunity Bank Service.

Changes:

* * * * *

Purposes:

Add a second paragraph "To private and public employers (including local and state employment agencies and outplacement agencies) in the employment process to use as notice of available individuals with interest in potential employment."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "None."

* * * * *

S322.01 DMDC

SYSTEM NAME:

DoD Job Opportunity Bank Service.

SYSTEM LOCATION:

W.R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense military and civilian personnel and their spouses, who have applied for participation in the job placement program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of name, SSN, correspondence address, branch of service, date of birth, separation status, travel availability, U.S. citizenship, occupational interests, geographic location work preferences, pay grade, rank, last unit of assignment, educational levels, dates of military or civilian service, language skills, flying

status, security clearances, civilian and military occupation codes, and self reported personal comments for the purpose of providing prospective employers with a centralized system for locating potential employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, 1143, 1144, 2358 and Executive Order 9397.

PURPOSE(S):

The purpose of this system is to facilitate the transition of military and civilian Defense personnel, and their spouses, to private industry and Federal employment in the event of a downsizing of the Department of Defense.

To private and public employers (including local and state employment agencies and outplacement agencies) in the employment process to use as notice of available individuals with interest in potential employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage.

RETRIEVABILITY:

Retrieved by Social Security Number of occupational or geographic preference.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record or their authorized representative. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are maintained on-line for one year and then are archived as an historical data base.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents and appealing initial determination are contained in DLA Regulation 5400.21; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, and from the subject individual via application into the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-4964 Filed 3-1-91; 8:45 am]
 BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Announcement of Public Scoping Meetings, Reconfiguration Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Announcement of public scoping meetings, programmatic environmental impact statement for reconfiguration of the nuclear weapons complex.

SUMMARY: On February 11, 1991, the Department of Energy (DOE) published

its Notice of Intent (NOI) to prepare the Reconfiguration Programmatic Environmental Impact Statement (PEIS), in accordance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). The PEIS will analyze reconfiguration of the DOE nuclear weapons complex. The NOI marked the start of the public scoping period for the PEIS. Through this notice DOE again invites comments on the scope of the PEIS, announces the location, date and time for public meetings to be held as part of its scoping process, and provides the rules it will follow for conducting the meetings.

DATES: To provide the public with the opportunity to provide oral comments, DOE will hold public scoping meetings on the dates announced below near all sites to be analyzed in detail in the PEIS. To ensure consideration in preparation of the PEIS, written comments must be postmarked by September 30, 1991. Late comments will be considered to the extent practicable.

ADDRESSES: Addresses for public meeting locations, and for preregistering to speak, are given below.

FOR FURTHER INFORMATION CONTACT: Written comments on the scope of the PEIS, requests for copies of DOE's related "Nuclear Weapons Complex Reconfiguration Study" (January 1991, DOE/DP-0083), requests for further information on the DOE nuclear weapons complex reconfiguration program, and requests for copies of the PEIS (when available) should be sent to: James R. Nicks, Associate Deputy Assistant Secretary for Weapons Complex Reconfiguration (Acting), DP-40, room GA-045, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1537, Attn: Reconfiguration PEIS.

For general information on the DOE NEPA review process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTAL INFORMATION:

Invitation to comment. In the NOI for this PEIS, DOE invited comments on the scope of the PEIS from all interested parties, including affected Federal, State and local agencies and Indian tribes. DOE solicited comments regarding the scope of the PEIS analysis, suggestions on significant environmental issues, alternatives to be included in the PEIS, and other content.

The NOI stated that DOE proposes to reconfigure its existing nuclear weapons complex to create a smaller, less diverse, more efficient complex at the

present sites, or at relocated or consolidated sites. The PEIS will analyze the environmental consequences of alternative long-term reconfiguration strategies for the DOE nuclear weapons complex, envisioned to be in place early in the 21st century ("Complex 21"), and weigh these against the consequences of maintaining the existing configuration. The PEIS also will be used to support DOE decisions regarding the configuration of its plutonium facilities in the mid-term (in about the year 2000).

Public scoping meetings. DOE will hold public scoping meetings near all sites analyzed in detail in the PEIS. The public meetings will provide an opportunity to present oral comments as well as written material. Each meeting will be held from 9 a.m. to 9:30 p.m., with breaks from 1 p.m. to 2 p.m. and 5 p.m. to 6:30 p.m. If necessary, DOE may extend the evening session for up to two hours, depending on the number of persons wishing to speak.

DOE will hold public scoping meetings near each of the 13 major sites of the nuclear weapons complex, and in Washington, DC, as listed below. DOE also will hold public scoping meetings near any other site identified for consideration for relocation of the weapons complex facilities now located at the Rocky Flats Plant, and co-located facilities; the time, date and location for those meetings will be published in a later *Federal Register* notice (expected to be on or about July 1, 1991). Public meetings will be held at least two weeks after notice is given in the *Federal Register*. The meetings also will be publicized in local media and other means as appropriate.

Registration. Persons wishing to speak at the public meetings are asked to register; as an option they may preregister. Preregistration may be made by mail or telephone. Written requests may be mailed to: Robert Menard, Oak Ridge Associated Universities/EESD, P.O. Box 117, Oak Ridge, TN 37831-0117, Attn: Reconfiguration PEIS.

Telephone requests may be made by calling Mr. Menard at (615) 576-7435, or by calling the local point of contact listed below. Facsimile requests may be transmitted to Mr. Menard at (615) 576-9384. Requests should be received no later than 5 p.m. on the Friday prior to the meeting.

Elected officials wishing to speak for their constituency are asked to identify their office when registering. People who wish to speak on behalf of an organization are asked to identify the organization when registering; unless time permits otherwise, DOE asks that only one person speak for an

organization at a meeting. Preregistered speakers are asked to please sign in at the meeting registration desk. A list of preregistered speakers will be available at the meeting registration desk.

In lieu of preregistration, people who wish to speak may register at the meeting, and will be handled first-come, first-serve as time permits.

Schedule of Public Scoping Meetings

Wednesday, March 20, 1991
Sandia National Laboratories
Contact: Gloria Zamora, (505) 844-3909

Meeting Location:
City of Albuquerque Convention Center,
401 Second Street NW.,
Albuquerque, New Mexico 87102,
(505) 768-4575.

Wednesday, April 3, 1991
Rocky Flats Plant
Contact: Terri Lachman, (303) 966-4871

Meeting Location:
Denver Marriott West,
1717 Denver West-Marriott Boulevard,
Golden, Colorado 80401,
(303) 279-9100.

Wednesday, April 10, 1991
Kansas City Plant
Contact: Tom Uko, (816) 997-3348

Meeting Location:
Ramada Hotel & Suites,
8787 Reeder Road,
Overland Park, Kansas 66214,
(913) 888-8440.

Wednesday, April 17, 1991
Pinellas Plant
Contact: Frank Juan, (813) 541-8333

Meeting Location:
St. Petersburg Hilton and Towers,
333 First Street South,
St. Petersburg, Florida 33701,
(813) 894-5000.

Wednesday, May 8, 1991
Mound Plant
Contact: John Lyons, (513) 865-4493

Meeting Location:
Holiday Inn,
Dayton Mall,
7999 Prestige Plaza Drive,
Miamisburg, Ohio 45342,
(513) 434-8030.

Wednesday, May 15, 1991
Lawrence Livermore National Laboratory
Contact: Charles Meier, (415) 423-2666

Meeting Location:
Holiday Inn,
720 Las Flores,
Livermore, California 94450,
(415) 443-4950.

Wednesday, May 22, 1991
Los Alamos National Laboratory
Contact: Glenn Seay, (505) 667-4136

Meeting Location:
Hilltop House,

Trinity at Central,
Los Alamos, New Mexico 87544,
(505) 662-2441.

Wednesday, June 5, 1991

Nevada Test Site

Contact: John McGrail, (702) 295-1812

Meeting Location:

University of Nevada, Las Vegas,
Moyer Student Union,
4505 Maryland Parkway,
Las Vegas, Nevada 89154-2008,
(702) 739-3221.

Wednesday, June 12, 1991

Washington DC

Contact: Diana Webb, (202) 586-1537

Meeting Location:

Holiday Inn Capitol,
550 C Street SW.,
Washington, DC 20024,
(202) 479-4000.

Wednesday, July 10, 1991

Savannah River Site

Contact: Dennis Ryan, (803) 725-8162

Meeting Location:

The Town House,
1615 Gervais Street,
Columbia, South Carolina 29201
(803) 771-8711.

Wednesday, July 17, 1991

Idaho National Engineering Laboratory

Contact: Christopher Powers, (208) 526-9586

Meeting Location:

Shilo Inns,
780 Lindsay Boulevard,
Idaho Falls, Idaho 83402,
(208) 523-0088.

Wednesday, July 24, 1991

Pantex Plant

Contact: Tom Walton, (806) 381-3120

Meeting Location:

The Amarillo Civic Center,
401 Buchanan,
Amarillo, Texas 79186,
(806) 378-4297.

Wednesday, July 31, 1991

Hanford Site

Contact: Jeff Harvey, (509) 376-2148

Meeting Location:

Richland Federal Building Auditorium,
825 Jadwin Avenue,
Richland, Washington 99352,
(509) 376-7505.

Wednesday, August 21, 1991

Savannah River Site

Contact: Dennis Ryan, (803) 725-8162

Meeting Location:

Westin Peachtree Plaza,
210 Peachtree Street,
Atlanta, Georgia 30303,
(404) 589-7468.

Wednesday, August 28, 1991

Y-12 Plant

Contact: Robert Menard, (615) 576-7435

Meeting Location:

Oak Ridge Associated Universities,
Pollard Auditorium,

210 Badger Avenue,
Oak Ridge, Tennessee 37831-0117,
(615) 576-3968.

Rules of conduct. Agencies, organizations, and the general public are invited to present oral comments regarding the PEIS at public scoping meetings. DOE will also accept written material at the meetings. Written and oral comments will be given equal weight in the scoping process.

People who wish to speak are asked to register following the procedures given above: preregistration is welcomed.

DOE will designate a presiding officer to chair each meeting. The presiding officer will establish the order of speakers and any additional procedures necessary to conduct the meetings. Registered speakers will be given equal time to present their remarks (approximately five minutes each). Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials or speakers representing organizations.

DOE will not question speakers; however, the presiding officer may ask speakers to clarify their statements to assure that DOE fully understands the comment. Written comments also will be accepted at the scoping meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will prepare a transcript of each scoping meeting. Copies of all transcripts, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in the NOI; reading rooms are repeated here for the reader's convenience.

DOE Public Reading Rooms

California

U.S. Department of Energy,
San Francisco Operations Office,
1333 Broadway,
Oakland, California 94612,
(415) 273-4428.

Colorado

U.S. Department of Energy,
Rocky Flats Public Reading Room,
Front Range Community College
Library,
3645 West 112th Avenue,
Westminster, Colorado 80030,
(303) 469-4435.

Idaho

U.S. Department of Energy,
Idaho Operations Office,
Public Reading Room,
1776 Science Center Drive,

P.O. Box 1625,
Idaho Falls, Idaho 83402,
(208) 526-1191.

Illinois

U.S. Department of Energy,
Chicago Operations Office,
9800 South Cass Avenue,
Argonne, Illinois 60439,
(708) 972-2010.

New Mexico

U.S. Department of Energy,
Albuquerque Operations Office,
Pennsylvania and 8th Streets,
P.O. Box 5400,
Kirtland Air Force Base, New Mexico
87115, (505) 845-5163.

Nevada

U.S. Department of Energy,
Nevada Operations Office,
2753 South Highland Drive,
Las Vegas, Nevada 89193,
(702) 295-1274.

South Carolina

U.S. Department of Energy Reading
Room,
University of South Carolina, Aiken
Campus,
Writing Center,
171 University Parkway,
Aiken, South Carolina 29801
(803) 648-6851, Extension 3262.

Tennessee

U.S. Department of Energy,
Oak Ridge Operations Office,
Freedom of Information Officer,
200 Administration Road, room G-209,
P.O. Box 2001,
Oak Ridge, Tennessee 37831,
(615) 576-9344 or 576-1216.

Washington

U.S. Department of Energy,
Richland Operations Office,
825 Jadwin Avenue, room 157,
P.O. Box 1970, Mail Stop A1-65,
Richland, Washington, 99352,
(509) 376-8583.

Washington, DC

U.S. Department of Energy,
Freedom of Information Reading Room,
room 1E-190,
Forrestal Building,
1000 Independence Avenue, SW.,
Washington, DC 20585,
(202) 586-6020.

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Signed in Washington, DC this 27th day of February, 1991, for the United States Department of Energy.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 91-5026 Filed 3-1-91; 8:45 am]

BILLING CODE 6450-01-M

Revision 1 to the DOE Implementation Plan for Conducting an Operational Readiness Review at the Rocky Flats Plant Prior to Resumption of Operations; Response to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of Revision 1 of a response of the Secretary of Energy (Secretary) to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board, for conducting an Operational Readiness Review at the Rocky Flats Plant prior to resumption of operations. DOE hereby requests public comment on Revision 1 of the response of the Secretary to Recommendation 90-4.

DATES: Comments, data, reviews, or arguments concerning the Secretary's response are due on or before April 3, 1991.

ADDRESSES: Send comments, data, reviews, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Donald F. Knuth,

Deputy Assistant Secretary for Operations, Defense Programs.

February 15, 1991.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004

Dear Mr. Conway: In response to your letter dated December 21, 1990, I am enclosing Revision 1 to the Department of Energy's (DOE) Implementation Plan for an Operational Readiness Review (ORR) at the Rocky Flats Plant prior to resumption of plutonium production. This plan has been modified to incorporate the revisions and changes cited in your letter as necessary to

satisfy the Board's criteria for an adequate and acceptable DOE implementation plan.

Your letter also notes the possible advantage of severing the link between Buildings 559 and 707 operations to enable the use of Building 559 in the clean-up activities. I concur in this view. The ORR process and subsequent resumption of plutonium handling activities at Building 559 will proceed on a schedule that is independent of the other buildings at the Rocky Flats Plant.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant

1.0 Background

This Implementation Plan has been prepared in response to the Defense Nuclear Facilities Safety Board's (DNFSB) recommendation to conduct an operational readiness review (ORR) for plutonium operations at the Rocky Flats Plant (RFP). This plan responds to the specific DNFSB recommendations concerning the nuclear safety of plutonium operations. This plan does not attempt to describe other related initiatives taken by the Department of Energy (DOE) in the areas of nuclear materials controls and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term waste management. DOE approval to resume plutonium operation at RFP will be based upon the results of the ORRs described in this Implementation Plan and the results of or plans for these other DOE initiatives.

EG&G assumed responsibility for the safety of RFP on January 1, 1990, as the management and operations contractor to DOE. At that time, RFP was shut down for a semiannual nuclear material inventory as required by DOE Order 5633.3. However, a wide range of criticisms and concerns, which were indicative of systematic deficiencies in the conduct of past operations, had been raised by oversight groups prior to shutdown. Reviews by EG&G management confirmed that there were deficiencies in operational control. It was concluded that troublesome incidents and events could continue to occur unless the underlying issues were identified and corrective actions were taken. Based on this assessment, EG&G recommended and DOE agreed, that resumption of plutonium operations at RFP should be delayed to permit EG&G to undertake the following measures:

(1) Perform a thorough review of the status of facilities and personnel;

(2) Implement selected measures to improve the margin of safety associated with plutonium operations in the near term; and

(3) Formulate a long-term program for improvement of RFP operations.

EG&G identified specific actions as essential elements for resumption of plutonium operations. Central to the EG&G resumption strategy was the introduction of short-term measures for early and substantial improvements in the formality and discipline of operations at RFP. Further review of operations and related activities by DOE, the DNFSB, and the Advisory Committee on Nuclear Facility Safety (ACNFS) identified additional short-term measures that should be completed prior to the resumption of plutonium operations.

The DOE's normal practice after an extended outage at a nuclear complex is to conduct a comprehensive ORR before resuming operations. In keeping with this practice and consistent with a May 3, 1990, DNFSB recommendation, the Secretary of Energy notified the DNFSB on June 20, 1990, that DOE would perform an ORR at RFP prior to resumption of plutonium operations.

EG&G is currently proceeding with a phased program to resume plutonium operations at RFP. Each phase of EG&G's program is intended to allow plutonium operations to be resumed in a specific building. The resumption program for each building consists of an EG&G program to upgrade the safety of operations, followed by a non-plutonium startup test program and an EG&G operational readiness review to confirm the adequacy of the upgrades to insure safety of operation at that building. At this point, EG&G will prepare a readiness to proceed memorandum to DOE. DOE will then conduct an operational readiness review.

Although this is the general sequence of events that has been developed, several practical problems will prevent this sequence from being fully serial. All equipment will have been functionally tested to the extent practicable prior to the EG&G operational readiness review. Some non-vital safety system preoperational tests will be performed throughout the review process including the period during which the DOE operational readiness review is conducted. It is intended, however, that non-plutonium startup tests (functional and preoperational) will be completed for vital safety system equipment before the EG&G readiness to proceed memorandum is sent to DOE. All non-plutonium testing will be completed and equipment dispositioned prior to the

completion of the DOE Operational Readiness Review except for equipment that cannot be tested without introducing plutonium for either safety or process degradation considerations. The status of functional and preoperational testing for each building will be evaluated and reported to the Board as a part of the detailed criteria to be submitted at least 4 weeks prior to the start of the DOE ORR.

It is also likely that some steps in the DOE operational readiness review may begin before the EG&G readiness to proceed memorandum is issued, e.g., to observe special steps in the preparations to resume operations.

Based on the results of the DOE Operational Readiness Review which will include briefings of the DNFSB and the ACNFS, and following a public hearing, the Secretary will decide whether to issue an approval to proceed memorandum. When such a memorandum has been issued by the Secretary, EG&G will undertake a graded startup test program of plutonium operations.

Both the DOE Rocky Flats Office and a designated group of experts from the DOE Operational Readiness Review Team will observe the plutonium startup tests. When the results of these tests are sufficient to demonstrate that plutonium handling operations in the building are being conducted satisfactorily, the Assistant Secretary for Defense Programs will authorize a full return to normal plutonium operations.

Since the plutonium-handling buildings at RFP will be made ready for operations individually, rather than all at once, DOE will conduct a separate ORR for each building after the completion of EG&G's readiness review for that building.

2.0 Purpose

The purpose of this DOE ORR process is to verify the readiness of RFP to resume plutonium operations safely. As part of this process, DOE will conduct an ORR for each building in which plutonium operations are conducted to evaluate whether EG&G has satisfied DOE's safety objectives (contained in a document entitled "ORR Safety Objectives and Assignments" and discussed in § 5.1 below). Each ORR conducted by DOE will include the following:

- Assessment of the adequacy and correctness of operating procedures for process and utility systems;
- Assessment of the adequacy of the level of knowledge achieved during operator requalification as evidenced by review of qualification and requalification documentation, including

examination questions and results; selective oral examination of operators; and observation of operator performance by members of the ORR Team;

- Examination of records of tests of safety systems and calibration of other instruments that monitor limiting conditions of operation or that satisfy operating safety requirements;

• Verification that all plant changes, including modifications of vital safety systems and plutonium processing workstations, have been reviewed for potential impact on procedures, training and requalification, and that training and requalification have been completed using the revised procedures; and

- Examination of each building's Final Safety Analysis Report (FSAR) to ensure that its description of the plant, procedures, and accident analyses is consistent with the as-built plant, including those modifications made during the outage period.

Other areas to be addressed in each ORR to assure that adequate safety is achieved and maintained include the following:

- Configuration of safety-related structures, systems, and components, including operational interfaces between separate buildings is consistent with assumptions made about such structures, systems, and components in the safety analysis reports. Safety-related structures, systems, and components include all vital safety systems and all other items which support safety functions;

- Management systems, organization, practices and policies;

- Self-assessment capability;

- Operating experience review program; and

- Adequacy of the graded startup test program, including planning for the plutonium handling tests to be included in the program.

3.0 Scope

In order to provide the Secretary of Energy with a partial basis for determining whether to allow EG&G to resume plutonium operations in each building, DOE Headquarters will implement an ORR for each building in which plutonium operations are conducted.

The DOE ORR will address the following for each plutonium operations building:

- The operational readiness review conducted by EG&G;

- Implementation of DOE directives and resolution of recommendations and findings made by oversight groups and review teams;

- Readiness of the plant, equipment, personnel, and administrative systems to resume plutonium processing operations; and

- Adequacy of operational support services in the areas of training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

The DOE ORR process will also include briefing DOE senior management and the DNFSB on the result of each ORR, public hearings on the ORR results for Buildings 559 and 707 (i.e., the first two buildings evaluated), and input to the Secretary of Energy's determination to resume plutonium operations for each building.

The ORR process will include consideration of the results of a related DOE initiative to review RFP compliance with DOE orders. However, initiatives such as nuclear material control and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term waste management issues are not within the scope of the ORR implementation plan. These areas will be addressed separately by the cognizant Department Headquarters program office(s) and will be addressed in the Secretary's approval to proceed memorandum. Although the adequacy of the nuclear material control and accounting program at Rocky Flats is outside the scope of this DOE operational readiness review, the ORR Team will review whether EG&G Rocky Flats is making adequate use of the detection techniques and accounting practices from that program in maintaining control of radioactive materials for purposes of public and worker safety.

4.0 Overall Approach

Each ORR will provide DOE senior management with independent, objective, building-by-building evidence of the adequacy of EG&G's preparations to resume plutonium operations safely.

The sequence of the ORR activities is discussed below.

a. *Readiness to Proceed Memorandum*—After successful completion of the readiness program and readiness review of a specific building, EG&G will issue a Readiness to Proceed memorandum requesting DOE approval for resumption of plutonium operations for that building. In this memorandum, EG&G will be required to identify all deferred items,

discrepancies, and open issues related to resumption including non-vital safety system testing not yet completed.

b. Operational Readiness Review—After receiving the Readiness to Proceed memorandum from EG&G, DOE will initiate an ORR for the building. During each ORR, a team comprised of Technical Experts and Senior Nuclear Safety Experts will review EG&G's procedures and programs; inspect equipment, systems, and the building; audit records; interview personnel; and observe simulated operations. At the completion of each ORR, the Team Leader and the Senior Nuclear Safety Experts will prepare a report regarding the readiness to safely resume plutonium operations in the building.

c. Operational Readiness Review Team Briefings—Briefings on the ORR report will be presented to DOE senior management, the ACNFS, and the DNFSB, as requested. A briefing will be presented to the DNFSB prior to the resumption of plutonium operations in each building.

d. Approval to Proceed Memorandum—Once all resumption objectives have been met, the DOE-Headquarters Resumption Program Office will request the Secretary of Energy's approval for EG&G to resume plutonium operations associated with the Plutonium Startup Test Program by preparing an Approval to Proceed memorandum for each building. Each memorandum will be based, in part, upon the results of the ORR conducted by DOE for that building. Other DOE initiatives related to the approval to proceed are identified in Section 3.0, above.

e. Plutonium Startup Test Program—Following the approval of resumption of plutonium operations, EG&G will conduct a plutonium startup test program in each building. Each plutonium operation in the building is to be performed in a supervised environment prior to final approval of operator qualifications. This startup test program will simultaneously confirm the operability of equipment, the viability of procedures, and the training of operators in a production setting. A follow-up review of this plutonium startup test program will be conducted by designated Senior Nuclear Safety and Technical Experts from the ORR Team to confirm that conclusions reached in the ORR final report remain valid. A report documenting the followup review will be provided to the DNFSB and DOE internal oversight groups.

In addition to these activities, DOE will hold public hearings prior to making recommendations to the Secretary of Energy regarding the resumption of

plutonium operations for Buildings 559 and 707. These buildings, an analytical laboratory and a manufacturing facility, respectively, are expected to be the first buildings EG&G makes ready for resumption of plutonium operations. The operations conducted in Buildings 559 and 707 represent many of the types of plutonium operations conducted at RFP. The public hearings will be held to provide the public with information concerning the DOE ORR and to address the public's questions and concerns.

The general process described above will be repeated for each building in which plutonium operations are conducted. However, as ORRs are conducted on each building, the scope of each ORR will be modified to reflect the results of the previous ORRs. For example, site-wide quality assurance procedures previously found to be acceptable would not have to be reviewed again for acceptability during ORRs of other buildings, but the implementation of these quality assurance procedures within each building would be reviewed in the subsequent ORRs. Consequently, the scope and the number of people assigned to ORR teams may decrease as the series of ORRs proceeds. The public will continue to be informed of the results of ORRs conducted for those buildings evaluated after Buildings 559 and 707.

5.0 Description

5.1 ORR Preparations

Each ORR will be conducted by a team of experts in engineering, science, nuclear facility safety, and plutonium processing operations. Team members will be individually chosen by the ORR Team Leader to ensure that collectively their backgrounds will include the important facets of operations to be reviewed at RFP. The experts will also be chosen to ensure that each ORR Team includes Senior Nuclear Safety Experts and Technical Specialists to cover the following functional areas, as appropriate, for each building:

- Emergency preparedness;
- Facilities, process, and fabrication engineering;
- Environmental protection and waste management;
- Fire protection;
- Industrial safety and hygiene;
- Maintenance, testing, and surveillance;
- Management, organization, and staffing;
- Operations;
- Quality assurance;
- Radiological protection and health physics;

- Nuclear safety assessment; and
- Training.

The reviews conducted by each ORR Team will be guided by a specific DOE-approved ORR safety objectives and assignments document.¹ The safety objectives contained in this document will be grouped into the following three categories:

- Plant and equipment (hardware) readiness;
- Management and personnel readiness; and
- Management programs (procedures, plans, etc.) readiness.

A set of safety objectives has been developed based on (1) essential actions to be completed prior to the phased resumption of operations, as identified by EG&G; (2) directives issued by DOE; (3) findings and recommendations of oversight groups; and (4) recommendations of review teams. These objectives are contained in the ORR safety objectives and assignments document that will be revised for each ORR and will identify the members of each ORR Team and their specific assignments.

The ORR Team will be led by a senior DOE manager and will be comprised of Senior Nuclear Safety Experts and technical experts. The Senior Nuclear Safety Experts will assist the Team Leader in determining the safety objectives for each building, defining the issues to be addressed by the technical experts, overseeing and reviewing the activities of the technical experts, and preparing a report regarding the safety of resuming plutonium operations based on the Team's findings.

Before arriving at RFP, the Team Leader and the Senior Nuclear Safety Experts will assist each technical expert in developing detailed criteria and a review approach for their assigned area of review. The criteria and review approach will provide each technical expert with a detailed basis for conducting the ORR within the context of the safety objectives set forth by the Team Leader and the Senior Nuclear Safety Experts. The Team Leader and Senior Nuclear Safety Experts will also manage the work of the Technical Experts to assure that the safety objectives are thoroughly assessed. The Team Leader may request that Team Members visit RFP for a limited time prior to the start of a building's ORR in order to facilitate preparations for that ORR.

¹ The initial version of this document is attached to this plan. Subsequent revisions will be provided to the DNFSB and DOE internal oversight groups as prepared.

The detailed criteria will be based on the combined expertise of the senior nuclear safety and technical experts, DOE orders and other requirements, the operational history of RFP and other DOE facilities, the issue management system at the RFP, and past appraisals. The review approach will identify the scope of the review and include plans for reviewing procedures and programs; inspecting equipment and facilities; auditing records; interviewing personnel; and observing operations during operational tests without plutonium. Selected reviews will also require simulated operations by EG&G to test the response of operational and support personnel to normal and off-normal events.

The detailed criteria and the review approach prepared by each Technical Expert will be reviewed by the Team Leader, the Senior Nuclear Safety Experts, and the other Technical Experts on the Team. Revisions will be made to the criteria and review approach as appropriate. After final approval by the Team Leader and the Senior Nuclear Safety Experts, the Technical Experts will use the revised criteria and review approach to perform their reviews.

A copy of the detailed criteria and review approach for each building will be provided to the DNFSB and DOE internal oversight groups.

5.2 ORR Process

After receiving and accepting EG&G's Readiness to Proceed memorandum for each building, the onsite portion of the ORR will begin. During a nominal 3-week onsite review, the ORR Team will use the inspection criteria and review approaches discussed above, and the ORR Technical Experts will assess whether the DOE safety objectives assigned to them for review have been met. The Senior Nuclear Safety Experts will actively participate in the reviews performed by the Technical Experts and assist the Team Leader in providing oversight of the ORR.

Each ORR will consist of programmatic reviews of EG&G's readiness activities to assess whether plutonium operations could be conducted safely if allowed to resume. In addition, the ORR Team will evaluate EG&G's performance in conducting ongoing activities, such as equipment operability checks and dry runs, and the simulated plutonium operations requested by the Team Leader.

To facilitate Team coordination and the exchange of information, the Team will meet each evening during the onsite review period. The results of the reviews conducted by the Senior Nuclear Safety Experts and Technical

Experts will be used by the Senior Nuclear Safety Experts and the Team Leader to refine and focus the future activities of the Technical Experts. For example, the Senior Nuclear Safety Experts may identify trends or patterns that indicate the need for additional investigation. An EG&G observer and a DOE-RFO observer will attend these meetings to aid in planning and coordinating upcoming activities and in validating the facts being relied upon by the ORR Team.

During the ORR, the documentation of review findings and the assembly of objective evidence of operational readiness will be the responsibility of individual Technical Experts in accordance with specific direction given by the Team Leader and the Senior Nuclear Safety Experts. Each Technical Expert's review findings will be documented on a standard worksheet.

At the end of the onsite portion of the ORR for each building, the Technical Experts will complete their evaluation of the operational readiness of the building, and their findings will be submitted to the Team Leader and the Senior Nuclear Safety Experts. The Senior Nuclear Safety Experts will review the Technical Experts' findings and assist the Team Leader in developing a recommendation regarding the readiness to safely resume plutonium operations in that building. A report will be prepared by the Senior Nuclear Safety Experts and the Team Leader to document the results of the ORR and provide justification for the Team's recommendation. The report will also identify any open items found in the review, including those that must be resolved prior to resumption of plutonium operations.

Team members will be asked to concur in the ORR report. Any dissenting opinions will be documented and attached to the report. The ORR report will be transmitted by the Team Leader to the Deputy Assistant Secretary for Facilities.

The Resumption Program Office in the Office of Defense Programs will prepare the Approval to Proceed memorandum for each building. The ORR report will become part of the basis for recommending to the Secretary the action that should be taken on EG&G's Readiness to Proceed memorandum. After the Secretary of Energy signs an Approval to Proceed memorandum, EG&G will be allowed to resume plutonium operations by initiating the graded plutonium startup test program for that building.

The Rocky Flats Operations Office (RFO) will verify closure, as necessary, of open items. In the event the open item

requires action on the part of the RFO, the closure of the item will be verified by DOE Headquarters. Either the Team Leader or the technical expert responsible for identifying the discrepancy will participate in each closure review.

6.0 Administration

6.1 Overall

This Implementation Plan is the top-level DOE document describing the activities necessary for safely resuming plutonium operations at each RFP building and serves the purpose of a management plan. The document hierarchy for the ORR is shown below.

- ORR Implementation Plan (top-level document for ORRs for all plutonium operations);
- ORR Safety Objectives and Assignments (mid-level document written for each building); and
- Criteria and Review Approaches (bottom-level document controlling the work of each Technical Expert).

6.2 Quality Assurance and Document Control

The quality assurance (QA) and document control requirements for each ORR will be identified by the ORR Team Leader, with assistance by the Senior Nuclear Safety Experts, will be issued by the ORR Team Leader, and will be implemented by all ORR Team members. The QA requirements will include Team Leader approval of the qualifications of Technical Experts, daily onsite peer review of the findings of the Technical Experts, verification of facts relied upon in preparation of ORR reports, oversight of the activities of the Technical Experts by the Senior Nuclear Safety Experts, and specification of the form of reports and the retention of records on which the Team's conclusions are based.

6.3 Responsibilities

Deputy Assistant Secretary for Facilities, Defense Programs—The Deputy Assistant Secretary for Facilities has overall responsibility for conducting the Operational Readiness Reviews at the RFP in preparation for resumption of plutonium operations. The Deputy Assistant Secretary for Facilities has appointed the Director of the Office of Engineering and Operations Support as the Team Leader for the RFP Operational Readiness Reviews.

The DOE Headquarters RFP Resumption Program Office—The DOE Headquarters RFP Resumption Program Office is responsible for coordinating DOE Headquarters resumption activities, concurring in resumption

plans, and preparing the Approval to Proceed memorandum for each building. The Approval to Proceed memorandum will identify any unresolved issues and recommend actions for resolution and will address generic and specific issues. Issues raised by the Secretary, the ACNFS, or the DNFSB will be resolved or action plans to resolve the issues will be prepared, as appropriate, prior to forwarding each Approval to Proceed memorandum to the Secretary from the Assistant Secretary for Defense Programs.

EG&G—EG&G is responsible for ensuring that its phased resumption program sufficiently improves the safety of plutonium operations at the RFP Plant to allow the resumption of plutonium operations. In addition, EG&G is responsible for preparing a Readiness to Proceed memorandum for each building to notify DOE-RFO that EG&G's readiness review has been completed satisfactorily. EG&G is also responsible for supporting the activities of each DOE ORR Team. For example, EG&G shall conduct operations and tests requested by the Team Leader and ensure that EG&G is represented at daily meetings of each ORR Team and at other Team meetings as requested.

ORR Team Leader—The Team Leader is responsible for the selection of ORR Team members; DOE direction and guidance to each ORR Team in accordance with this Implementation Plan; preparation of internal ORR Team correspondence; liaison with the Manager of the Rocky Flats Operations Office and the Director of the RFP Resumption Program Office; and submission of ORR reports to the Deputy Assistant Secretary for Facilities. The Team Leader is also responsible for issuing the ORR safety objectives and assignments document at least 4 weeks before the start of each ORR.

ORR Senior Nuclear Safety Experts—The ORR Senior Nuclear Safety Experts are responsible for providing assistance to the Team Leader in the exercise of his responsibilities; providing guidance to the Technical Experts; identifying the issues to be addressed during the ORR; approving the criteria and review approaches to be used by the Technical Experts; and assisting the ORR Team Leader in writing the report for each ORR. The ORR reports will be signed by all Senior Nuclear Safety Experts and the Team Leader. Any differing opinions will be attached in writing.

ORR Technical Experts—The Technical Experts are responsible for assessing the adequacy of EG&G's readiness results by conducting reviews in selected areas important to the safe

resumption of plutonium operations. The Technical Experts will assist the Team Leader and the Senior Nuclear Safety Experts in defining the scope of review in their assigned area; documenting the criteria and review approach for their assigned area, subject to approval by the Senior Nuclear Safety Experts and the Team Leader; attending Team meetings to coordinate activities with other Team members; documenting their own activities, findings, and conclusions in a manner to be specified by the Team Leader and the Senior Nuclear Safety Experts; and concurring in final ORR reports written by the Team Leader and the Senior Nuclear Safety Experts (any differing opinions will be attached to the report in writing).

Rocky Flats Operations Office Manager—The Manager of the Rocky Flats Operations Office (RFO) is responsible for coordinating DOE-RFO resumption activities, approving the EG&G RFP resumption plans, and forwarding the Site Resumption Action Memorandum for each building to the Director, RFP Resumption Program Office, under a separate cover letter signed by the DOE RFO Manager that includes any DOE RFO recommendations. The Manager of the RFO is also responsible for ensuring that the DOE RFO is represented at meetings of the ORR Team, as requested, and for verifying resolution of open items.

7.0 Deliverables and Schedule

The ORR safety objectives and assignments document will be issued at least 4 weeks prior to the start of each ORR and will be modified as necessary for each building. A copy of each Technical Expert's criteria and review approach, which are developed from the ORR safety objectives and assignments document for each building, will be approved prior to the start of ORR onsite inspections.

A report documenting the results of each ORR will be issued within 2 weeks of completion of the onsite portion of the ORR and prior to any public hearing on that ORR. The report will contain the recommendation of the ORR Team regarding the safety of resuming plutonium operations for that building.

A schedule for performing ORRs at RFP will be made available after EG&G issues a resumption schedule. The DNFSB will be informed of the ORR start date for each building when these dates have been selected.

Operational Readiness Review; Safety Objectives and Assignments for the Rocky Flats Plant

1.0 Purpose

This document provides the initial safety objectives and team member assignments for conducting the Operational Readiness Review (ORR) at the Rocky Flats Plant (RFP). The approach for conducting the ORR is described in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The specific assignments will be provided for each ORR by a revision of this document that is consistent with the Implementation Plan.

2.0 Team Composition

The individuals identified for participation in the initial ORRs are listed below. A statement of their credentials is provided in appendix A. Additional skill areas may be identified before the initial ORRs are conducted.

Team Leader

James P. Knight
Senior Safety Experts
Roger J. Mattson, Coordinator
William Kerr
James P. O'Reilly
Lawrence J. Ybarrondo

Technical Experts

Lance E. Traver, Review Coordinator
Joseph F. Tinney, Issue Resolution
H. Michael Hawkins, Emergency Preparedness
Carl R. Forsberg, Engineering (Facilities, Process, Fabrication)
Gary J. Toman, Engineering (Facilities, Process, Fabrication)
Monique V. Helfrich, Environmental Protection and Waste Management
James A. Shurick, Fire Protection
Lawrence Blackwell, Industrial Safety
Charles R. Jones, Maintenance, Testing, and Surveillance
David M. Pinkston, Maintenance, Testing, and Surveillance
Management, Organization, and Staffing *
Albert P. Baione, Management, Organization, and Staffing
Shirley J. Olinger, Management, Organization, and Staffing
Rowland E. Felt, Operations
Leonard W. Gray, Operations
Robert E. Hanvey, Operations
Matthew S. McCormick, Operations
Marvin P. Norin, Quality Assurance
Arthur J. Toy, Radiological Protection and Instrumentation
C. Leslie Brown, Safety Assessment

* Additional Technical Experts in this area are being sought.

Elizabeth Conrad, Safety Assessment
 Gilbert A. Nicholson, Safety
 Assessment Training *
 John W. Robinson, Training
 Eugene F. Redden, Training

3.0 Safety Objectives and Assignments

Readiness to resume plutonium operations at Rocky Flats will be evaluated using the safety objectives set forth in sections 3.1 to 3.3. The safety objectives were developed by the ORR Team Leader and the Senior Nuclear Safety Experts based on professional judgment and experience, input from the Technical Experts aided by a week-long meeting of the Team at the Plant in June 1990, and on information contained in references listed in appendix C. Particular attention was given to the following references:

- An EG&G report, "Rocky Flats Plan for Phased Resumption of Plutonium Operations" (Reference 17);
- Directives issued by DOE (References 8, 14, and 16);
- Findings and recommendations of oversight groups (References 11, 12, and 13); and
- Recommendations of review teams (References 9, 10, and 15).

The information to be relied on by the ORR Team will be recorded and, where appropriate, references will be added to appendix C. The safety objectives of sections 3.1 through 3.3 were developed generically; they will be modified as necessary for each ORR based on the unique operating features of the building being evaluated.

Each Technical Expert will be assigned to evaluate a set of safety objectives based on their area of review. The Technical Experts will be responsible for determining whether their assigned objectives have been met in accordance with the process set forth in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The assignments for each technical expert are listed in appendix B.

3.1 Plant and Equipment (Hardware) Readiness

The hardware objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (H.1, H.2, etc.). Under each objective, supporting objectives are identified and given a number (H.1.1, H.1.2, etc.).

H.1 The configuration of vital safety systems, including safety-related

process systems and safety-related utility systems, is consistent with assumptions made about such systems in Safety Analysis Reports (SARs).

H.1.1 Vital safety systems have been correctly identified in the SARs.

H.1.2 Identification markers are installed on vital safety systems, including safety-related process systems, safety-related utility systems, and any other equipment and instrumentation used to demonstrate compliance with operational safety requirements.

H.1.3 The adequacy of labeling and drawings for vital safety systems has been verified.

H.1.4 The types, modes of operation, and locations of vital safety systems, including safety-related process systems and safety-related utility systems, identified in new procedures are physically verified.

H.2 The condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems, are confirmed.

H.2.1 Instruments, indicators, and alarms that monitor limiting conditions of operation or that satisfy operational safety requirements have been demonstrated to be capable of performing their intended functions in the required manner.

H.2.2 The maintenance backlog for vital safety systems, including safety-related process systems and safety-related utility systems, is acceptable for resumption of operations.

H.2.3 Good housekeeping is practiced in all buildings that are involved with plutonium operations.

H.2.4 Tools and equipment for proper operation and maintenance of vital safety systems, including safety-related process systems and safety-related utility systems, have been identified, calibrated, tested, and are available.

H.2.5 Ductwork is evaluated to identify and characterize plutonium buildup. There is high confidence that all lines of ductwork with more than 400 grams of plutonium have been identified.

H.2.6 Plutonium is removed, or ductwork is replaced, to the maximum extent practicable, for those lines of ductwork containing more than 400 grams of plutonium. In no case shall a residue exceeding 400 grams of plutonium remain in any one line of ductwork unless approved by the Secretary of Energy.

H.2.7 Improved prefilters have been installed in those glovebox exhaust lines identified as requiring this modification.

H.2.8 Prefilters have been installed on ventilation system bypass lines, and

other changes to guard against plutonium buildup in ductwork have been made for all gloveboxes identified as requiring these modifications.

H.2.9 Operability of vital safety systems, including safety-related process systems and safety-related utility systems, is physically verified.

H.3 Facilities and equipment are available for operational support services, including training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

H.3.1 Equipment and facilities needed for operational support services are available.

H.3.2 Sampling and analysis capabilities exist to perform the monitoring and characterization activities needed for resumption of operations, including those for environmental protection and waste management.

H.3.3 Approved storage facilities exist to receive wastes and residues generated from operations within a building.

3.2 Management and Personnel Readiness

The personnel objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (P.1, P.2, etc.). Under each objective, supporting objectives are identified and given a number (P.1.1, P.1.2, etc.).

P.1 There are sufficient numbers of qualified plutonium operations personnel, supervisors, shift technical advisors, and managers to support the safe resumption of plutonium operations.

P.1.1 Plutonium operations personnel have an adequate understanding of technical fundamentals including chemistry, ionizing radiation, criticality, and plutonium pyrophorosity.

P.1.2 Plutonium operations personnel, supervisors, and shift technical advisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.1.3 An adequate startup test program has been developed and will be used for final sign-off of operator qualification.

P.1.4 Plutonium operations personnel have been trained to adhere to procedures and operational safety requirements and to understand the importance of procedural compliance.

* Additional Technical Experts in this area are being sought.

P.1.5 Qualification and staffing requirements have been established and met for plutonium operations personnel, supervisors, shift technical advisors, and managers.

P.1.6 The level of knowledge achieved during operator qualification is adequate to operate safely.

P.2 As a minimum one DOE person trained and qualified in plant operations will be stationed in each plutonium building during operations that involve plutonium.

P.2.1 Qualification requirements and staffing levels are established and met.

P.2.2 Training has been conducted.

P.2.3 Personnel are familiar with the buildings, equipment, operating procedures, and the identity of senior building managers.

P.3 Sufficient numbers of qualified personnel are provided for operational support services, including training, maintenance, hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

P.3.1 Operational support personnel have a requisite understanding of technical fundamentals.

P.3.2 Operational support personnel and supervisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.3.3 Qualification and staffing requirements have been established and met for operational support personnel.

P.3.4 The level of knowledge achieved during qualification is adequate to support resumption of operations.

P.4 Personnel exhibit an awareness of safety and environmental protection requirements and, through their actions, demonstrate a commitment to comply with those requirements.

3.3 Management Programs (Procedures, Plans, etc.) Readiness.

The management systems objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (M.1, M.2, etc.). Under each objective, supporting objectives are identified and given a number (M.1.1, M.1.2, etc.).

M.1 There are adequate and correct procedures and safety limits for operating the process systems and the utility systems.

M.1.1 Procedures for operations, training, and maintenance reflect the current configuration (including changes made during the outage) of vital safety systems, including safety-related process systems and safety-related utility systems.

M.1.2 Operating and maintenance procedures for vital safety systems, including safety related process systems and safety-related utility systems, and building administrative procedures are consistent with approved operational safety requirements and deal with normal and abnormal events (e.g., spills).

M.1.3 Consistent with the contractor's operating philosophy, operating procedures for vital safety systems, including safety-related process systems and safety-related utility systems, contain sufficient detail to permit initiation of use of a "procedural compliance" concept at RFP.

M.1.4 Procedures produced or revised for the conduct of plutonium operations have undergone a joint walkdown verification by DOE and EG&G technical personnel.

M.1.5 The adequacy of operating procedures is demonstrated during equipment and system operability checks.

M.1.6 Operational safety requirements are established and measured to ensure that operations are conducted within the analyzed safety envelope.

M.1.7 Operational safety requirements have been developed by engineering and plutonium operations personnel.

M.1.8 A system has been established to ensure procedures are kept current and accurate, including temporary changes to procedures.

M.1.9 Safety limits are clearly stated and posted in appropriate locations.

M.1.10 The safety analysis report for each building has been reviewed and supplemented to present an adequately analyzed safety envelope for the facility.

M.2 Training and qualification programs for plutonium operations personnel have been established, documented, and implemented.

M.2.1 Contents of training and qualification programs properly account for plant and procedural changes.

M.2.2 Primers covering technical fundamentals, including chemistry, ionizing radiation, criticality, and plutonium pyrophorosity, are available.

M.2.3 Training and qualification programs, including building-specific training, job-specific training, and general employee training are available.

M.2.4 Instructor guides, examinations, lesson material, and reference documents are available and adequate to support an effective training program.

M.2.5 The training department uses post-training feedback, internal

evaluations, and operating experience to modify their programs as needed.

M.2.6 An adequate startup test program has been developed and will be used to evaluate the adequacy of the training program for plutonium operations personnel.

M.3 Vital safety systems are defined, and a system to maintain control over the design and modification of plutonium facilities and vital safety-related utility systems, is established.

M.3.1 Administrative controls are provided to assure that modifications of plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, made during the outage have been analyzed, documented, and approved.

M.3.2 An adequate process has been established to assure that documentation for plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, is established and kept current.

M.3.3 Administrative controls are in place to assure that deactivation of alarms is accomplished in a controlled manner requiring formal review and approval.

M.3.4 One-line drawings and other documentation relied upon to demonstrate compliance with operational safety requirements are up-to-date with the current plant configuration.

M.4 A system is in place to confirm and periodically reconfirm the condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.1 Procedures are in place to verify the operability of alarms and instrumentation for vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.2 Appropriate procedures, including monitoring requirements and operational constraints, are in place to assure that future operations will not allow the level of plutonium in any line of ductwork to exceed 400 grams.

M.4.3 Procedures are in place to assure that if the 400-gram limit for plutonium buildup in the ductwork is exceeded, or if the risks to personnel from accumulation of radioactive material in ductwork appear unacceptable, or if the level of accumulation of plutonium in ductwork presents an unreviewed public safety question, continued operation of such a ductwork system will require a full technical justification and Secretarial approval.

M.4.4 Surveillance requirements, procedures, and intervals are established and implemented.

M.5 A process has been established to identify, evaluate, and resolve recommendations and findings made by oversight groups, official review teams, audit organizations, and the operating contractor.

M.5.1 A system for identifying, reviewing, and cataloging documents that describe deficiencies or recommendations is established and adequately implemented.

M.5.2 A system for prioritizing and tracking corrective actions and recommendations is established.

M.5.3 Criteria for identifying resumption issues have been developed.

M.5.4 Issues to be resolved prior to resumption of plutonium operations have been properly identified and corrective actions have been completed and verified.

M.6 A baseline compliance status review of the nine Category 1 DOE Orders has been performed and non-complying items have been addressed.

M.6.1 A process has been implemented to identify and evaluate noncompliance issues associated with the nine Category 1 DOE Orders and to determine which specific issues must be resolved prior to resumption of plutonium processing operations.

M.6.2 Noncompliance issues have been corrected or appropriately justified for use as is.

M.7 Management systems are established to assure operational support services (e.g., training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection, and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering) are adequate for the resumption of plutonium processing.

M.7.1 Organizational responsibilities for and interfaces with operational support services have been formally identified and implemented.

M.7.2 Readiness for the resumption of plutonium operations has the concurrence of cognizant operational support services organizations.

M.7.3 An effective public information program is established, including provision for comment by the public, oversight groups, and Federal, State and local agencies.

M.7.4 An emergency preparedness program has been established and drills and exercises are conducted at appropriate intervals. Drills and exercises have demonstrated the capability to perform emergency preparedness activities.

M.7.5 An adequate maintenance program has been established.

M.7.6 An adequate quality assurance program has been established, including processes for tracking, trending, and correcting significant conditions adverse to quality.

M.7.7 Necessary environmental permits have been obtained and necessary environmental compliance agreements are in place.

M.7.8 Safety programs have been established that ensure that plant personnel are trained and can respond correctly to safety hazards.

M.7.9 Adequate reviews are conducted by operational support organizations with qualified personnel at suitable intervals to monitor safety performance.

M.7.10 A program for adequate oversight of unresolved safety question determinations has been implemented.

M.7.11 Operational support organizations have the appropriate administrative controls (e.g. schedules, plans, policies, surveillances, procedures) to ensure compliance with appropriate Federal and State regulations and good practices.

M.8 A formal program is established to develop a site-wide culture that places the highest priority on safety and protection of the environment.

M.8.1 Policies, plans, and procedures are established that can reasonably be expected to support the desired cultural changes such as placing the highest priority on safety and protection of the environment, formality and discipline of operations, and inquisitive employee attitudes.

M.8.2 A self-assessment process is in place to provide a mechanism to measure safety performance and to determine and correct the root causes of unusual occurrences.

M.8.3 Facility management personnel are made aware of safety issues and occurrences that could affect their operations, and lessons learned are applied.

M.8.4 The philosophy of openness on matters affecting safety, health, and environment is supported by an effective public information program and line management practices.

M.8.5 Management commitment to the safe operation of the facility is evident from personal involvement, interest, and knowledge.

M.9 The resume of the EG&G corporate review verify the readiness of hardware, personnel, and management systems to result plutonium operations.

M.10 An adequate startup test program has been developed and the non-plutonium handling portion has been adequately implemented to

confirm the operability of equipment, the viability of procedures, and the training of operators. The startup test program shall also include adequate plans for graded plutonium testing to simultaneously confirm operability of equipment, the viability of procedures, and the training of operators.

M.11 Functions, assignments, responsibilities, and reporting relationships of individuals are clearly defined, understood, and effectively implemented with line management responsibility for control of safety.

M.11.1 Responsibility, authority, and accountability of each element of line management, from top-level management through shift supervisors, is clearly defined by policy and evident by practices.

M.11.2 Effective coordination and communication exist among the line organizations.

M.12 The DOE Rocky Flats Operations Office (DOE/RFO) has established oversight programs to support the resumption of plutonium processing operations.

M.12.1 The DOE/RFO organization is committed to the safe operation of the facility as evidenced by its day-to-day involvement with operations activities and its level of knowledge of plant operations.

M.12.2 DOE/RFO has the capability to verify the adequacy of EG&G's operations at RFP prior to and following resumption of operations.

M.12.3 DOE/RFO has established a formal program to foster a safety culture that places the highest priority on safety and protection of the environment.

Appendix A—Statements of Credentials

Albert P. Baione is a nuclear engineer with 11 years experience. Mr. Baione worked in the DOE Division of Naval Reactors for 10 years in nuclear facility operations and safety. The majority of this work involved the development and evaluation of refueling and radiological control programs, including evaluations of management and organizational performance. Mr. Baione led Naval Reactors Headquarters inspection teams that appraised the performance of nuclear-powered ships and nuclear ship repair facilities in their implementation of Headquarters radiological control requirements. He serves as Engineering Group Manager in SCIENTECH's Rockville, Maryland, office and participates in various safety and regulatory projects related to nuclear engineering for the NRC and DOE.

Lawrence Blackwell is a Ph.D physicist with 32 years of management experience. He provides consulting services in nuclear facility safety, personnel, reliability programs, emergency management, specialized training, and industrial safety. In his 12 years of employment at Los Alamos

National Laboratory (LANL), Dr. Blackwell held assignments in the Health, Safety, and Environment Division including Safety Director, Associate Division Leader, Fire Protection Program Manager, and Construction Project Manager, giving him a broad background in industrial safety. He was responsible for the complete revision and documentation of the LANL industrial safety program and developed the necessary training and evaluation systems to ensure implementation and compliance. Dr. Blackwell also designed and operated the LANL Emergency Operations Center and directed the Emergency Management Program.

C. Leslie Brown has 30 years experience in nuclear criticality safety. He is a Fellow Scientist with the Westinghouse Hanford Company and is currently serving as a criticality safety representative at the plutonium finishing plant. Mr. Brown has conducted criticality experiments with fast reactor fuel and performed criticality safety analysis for commercial nuclear power plants. He has served as a process engineer at the plutonium fabrication plant and was trained in criticality safety at the Hanford Critical Mass Laboratory. He was elected a Fellow of the American Nuclear Society (ANS) in 1980 and received the Bronze George Westinghouse Signature Award for Excellence in 1988 and the ANS Criticality Safety Division Achievement Award in 1978. He has published 76 documents, 14 ANS transaction papers, and 11 journal articles on the subject of criticality safety.

Elizabeth A. Conrad is a chemical engineer with 9 years experience in nuclear chemical processing operations at Westinghouse Hanford Company (WHC). As a process engineer in the PUREX Plant, she provided technical shift support during the 1983 restart of the plant and served as lead engineer for neptunium recovery startup in 1985. In 1987, she was chosen as the technical team leader for the criticality safety review of chemical process operations. As a senior process engineer at the plutonium finishing plant (PEP), Ms. Conrad contributed to the successful restart of plutonium metal production after the plant was shut down for safety reasons. In 1988, she established and managed the PEP Operations Training Group instituting formal criteria for the evaluation of operator and shift management qualifications. Ms. Conrad is currently assigned as the WHC technical advisory on plutonium processing to the DOE Office of Nuclear Materials.

Rowland E. Felt is a Ph.D. chemical engineer with 26 years experience in plutonium and uranium processing at the DOE Hanford Site. His experience includes development of aqueous and pyrochemical processes for plutonium conversion and scrap recovery. Dr. Felt served as the Process Engineering Manager for the 234-5 Z Plant and served as the Separation Process Engineering Manager for the 200 Area at Hanford. His safety experience includes participating in the fire investigation at Rocky Flats in 1969, conducting plutonium fire experiments, and follow/on evaluation of plutonium release fractions associated with accident analyses. Dr. Felt's recent

assignment with Westinghouse Idaho Nuclear Company included the development of a flowsheet and supporting process analysis for dose reduction, waste minimization, and plant support operations for the Special Isotope Separation Program. He is currently serving as the Idaho National Engineering Laboratory representative to the Planning Support Group at the Savannah River Site.

Carl R. Forsberg has been involved in the design and construction of high explosive and nuclear material processing facilities for the past 34 years. He served in the Plant Engineering Department at the Lawrence Livermore National Laboratory for 17 years and served the Atomic Energy Commission and DOE Office of Military Applications for 12 years. Mr. Forsberg was the construction project manager during the design of the Lawrence Livermore National Laboratory plutonium facility and was the DOE Headquarters project manager for the Office of Military Applications during the latter half of construction of the Rocky Flats Plutonium Recovery and Waste Treatment Facility, Building 371/374. He retired from DOE in 1985; since then he has been providing consulting services primarily related to construction project management and facility design.

Leonard W. Gray has a Ph.D. in inorganic chemistry, and is an internationally recognized expert in actinide processing. He has 20 years experience at the Savannah River Site and 2 years experience at Lawrence Livermore National Laboratory (LLNL). Dr. Gray has authored or coauthored more than 50 publications and presentations, the majority having been written as a result of new plutonium feedstocks or problems resulting from upsets. As a process troubleshooter, he dealt with the following unit operations in plutonium processing: dissolution, feed clarification, purification (solvent extraction, cation exchange, anion exchange, and selective precipitation), isolation, and conversion to either metal or oxide. Dr. Gray is the Section Leader for the Plutonium Processing Technology Section of the Special Isotope Separation program at LLNL. He provides technical leadership in all areas of plutonium processing (aqueous and molten salt-based chemistries), equipment engineering, process automation, and process control.

Robert E. Hanvey has 35 years experience in nuclear chemical processing at the Savannah River Site (SRS) where he worked in both plutonium finishing and residue recovery operations. He has prepared safety analysis reports for plutonium processing at SRS, was a member of the DOE Operational Readiness Review team at Lawrence Livermore National Laboratory, and participated in special studies for DOE Headquarters for plutonium residue recovery. Since 1987, Mr. Hanvey has been a production planner for Westinghouse Savannah River Company at SRS. He works with representatives from other DOE Nuclear Weapons Complex Sites regarding the transfer and processing of plutonium-239. Mr. Hanvey also provides input on the future direction for process improvements and production schedules for the entire DOE Nuclear Weapons Complex.

H. Michael Hawkins has a Graduate Certificate in National Security and Emergency Mobilization; he has 18 years experience in emergency preparedness and safeguards and security with the Atomic Energy Commission, NRC, DOE, and in the commercial nuclear industry. Mr. Hawkins has recently been involved in DOE's NMP contract as an SAIC senior scientist in support of the review and evaluation of the Emergency Management Program. These efforts include involvement with rewriting DOE Order 5000.3A, participation in the Occurrence Reporting Pilot Program at the Savannah River Site and Rocky Flats Plant, assistance to the DOE Office of Defense Programs in the order compliance review of Westinghouse and EG&G, and various activities in direct support of the DOE Office of Emergency Operations. For 8 years, Mr. Hawkins was actively involved in the NRC's Emergency Preparedness Program and was instrumental in the design, construction, and operation of the NRC Operations Center. Mr. Hawkins was the Manager of the Seabrook Nuclear Power Plant Emergency Plans and Procedures organization and was an active participant in Seabrook's Initial Federal Emergency Preparedness Exercise. His field assignment at the Comanche Peak Steam Electric Station included overall coordination and scenario development of the initial Emergency Preparedness exercise among Texas Utilities (TU) Electric, Federal (NRC and FEMA), State of Texas, and various local governments.

Monique V. Helfrich is a Senior Environmental Engineer at SAIC, she has 9 years experience in safety and environmental issues at various DOE facilities. Ms. Helfrich has an M.S. in Systems Engineering and is currently providing technical support on environment, safety, and health issues to the Assistant Secretary of Defense Programs. Ms. Helfrich was a senior environmental and systems engineer and on-site project manager for a technical support contract to the Rocky Flats Office Waste Management Branch. This support included analysis of the responsibilities and schedules inherent in compliance agreements entered into by DOE, the Environmental Protection Agency, and the Colorado Department of Health; and evaluation of waste disposal efforts in the Pondcrete Pad Clearance and Solar Evaporation Ponds Cleanup projects.

Charles R. Jones has an M.S. in Mechanical Engineering with 24 years of experience including a 20-year career in nuclear reactor and nuclear weapon technology with the United States Navy. In the Navy, he served as a senior nuclear engineer and operator on several nuclear-powered surface ships, qualified as Chief Engineer of the USS Nimitz, CVN 68, conducted a training program for nuclear plant Chief Engineers, and participated in team inspections of nuclear power plants for the Pacific Fleet. He is an experienced engineer troubleshooter for technical problems associated with power plant machinery, procedures, operator training, plant system operations, and qualification of maintenance personnel. From 1981 to 1986, he worked in the Navy advanced weapons program on nuclear

weapons safety, security, and control matters. Since his retirement from the Navy in 1988, he was assisted in safety system inspections and system operational reliability studies for various commercial nuclear power plants. As an employee of SCIENTECH, Inc., Mr. Jones participated in the September 1989 and June 1990 Criticality Safety Assessments at Rocky Flats, the December 1989 Rocky Flats Facility Observation Team, and two Technical Safety Appraisals in the area of maintenance. He is currently providing assistance to DOE Headquarters on monitoring the progress of the Savannah River Site Reactor Safety Improvement Program (RSIP).

William Kerr is a Ph.D. electrical engineer with 47 years of experience. He has been a professor at the University of Michigan since 1953, where he served as Chairman of Nuclear Engineering for 13 years and director of Michigan Memorial-Phoenix Project from 1981 to the present time. He has been a member of the Advisory Committee on Reactor Safeguards (ACRS) of the Nuclear Regulatory Commission since 1972, having served three years as ACRS Chairman, most recently in 1987 and 1988. Dr. Kerr has consulted with Atomic Power Development Associates, Oak Ridge National Laboratory, and the Department of State and was a member of the Michigan Governor's Task Force on Nuclear Waste Disposal. He has received the Compton Award of the American Nuclear Society, Outstanding Educator in America Award, and the NRC's Meritorious Service Award.

James P. Knight has 30 years experience in mechanical and nuclear engineering. He worked for 8 years as a design engineer and analyst for spacecraft, biochemical process, and reactor equipment components. In the later part of this period, he was Chief of the Engineering Services Section for the National Bureau of Standards Reactor (NBSR) and Vice Chairman of the NBSR Hazards Committee. For 17 years, Mr. Knight served on the staff of the Atomic Energy Commission and the Nuclear Regulatory Commission in the regulation of nuclear facility safety. He managed the safety review and evaluation efforts on the mechanical, structural, materials, and geosciences areas for over 85 nuclear power plants as well as other regulated nuclear facilities. He also led numerous special evaluation teams dealing with nuclear safety issues requiring resolution at the Commission level. For the past 5 years, Mr. Knight has managed the Department of Energy headquarters programs for licensing, quality assurance, and safety appraisals. Mr. Knight is presently Director, Office of Engineering and Operations Support, Office of Defense Programs.

Matthew S. McCormick has 8 years experience in nuclear facility safety analysis, reactor operation, radiological controls, environmental compliance, procedures, and nuclear systems. He currently is a supervisory nuclear engineer at DOE Rocky Flats Operations Office. Previously, he was a Senior Nuclear Engineer with the Savannah River Restart Office and was a Nuclear Engineer with the Office of Environment, Safety, and Health. Mr. McCormick has also served as a DOE Headquarters site

representative at the Savannah River Site. He was a supervisory nuclear engineer at Mare Island Naval Shipyard.

Roger J. Mattson is a Ph.D. mechanical engineer with 26 years of experience. He worked in nuclear facility design for 3 years at Sandia Laboratory, served the Atomic Energy Commission and the NRC for 17 years in the regulation of nuclear facility safety, managed radiation surveillance and emergency preparedness at the Environmental Protection Agency, assisted the U.S. Government in responding to accidents at Three Mile Island and Chernobyl, and assisted the International Atomic Energy Agency with siting standards and safety principles. For 7 years at NRC, Dr. Mattson directed the technical review of applications for construction permits and operating licenses for nuclear power plants. He has received NRC Meritorious and Distinguished Service Awards. Since 1987, he has been Vice President of SCIENTECH, Inc., where he manages offices in Rockville, Maryland, Washington, D.C., and Dallas, Texas, and consults in the areas of nuclear safety, waste management, and environmental protection. Dr. Mattson was the Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Gilbert A. Nicholson has an M.S. in chemical engineering and 28 years experience in the radiochemical processing field. His process engineering responsibilities have ranged from shift process control engineer to team leader and coordinator for process engineering and safety support functions at the Hanford PUREX Plant. His management experience includes process engineering and control management at the PUREX Plant, and management of the Hanford Plutonium Finishing Plant. His Hanford Site safety support experience includes development of the draft Operational Safety Requirements document and Final Safety Analysis Report (FSAR) for the PUREX Plant. With SAIC, Mr. Nicholson has provided extensive technical support to the DuPont-Savannah River Site (SRS) in the preparation of a major revision to the SRS F-Canyon Safety Analysis Report and to Westinghouse Hanford Company in the preparation of major revisions to the FSAR's for the Aging Waste Facility and the B-Plant Waste Processing Facility.

Marvin P. Norin has an M.S. in mechanical engineering and 37 years of experience. He is a Senior Scientist at SAIC and has participated in various readiness inspections and safety reviews at numerous DOE facilities, including the DOE Quality Verification at Oak Ridge and a quality inspection of the High Flux Isotope Reactor. He assisted the DOE Office of Materials Production in the development of an Action Plan responding to the Tiger Team Assessment of the Feed Materials Production Center in Fernald, Ohio. Prior to joining SAIC, he worked for DOE and its predecessor agencies as Director of Regulatory Development and as Deputy Director of Safety, Quality Assurance, and Safeguards in the Nuclear Energy Program; Chief of Codes and Standards Branch; and was a systems engineer for the Fast Flux Test Facility and breeder demonstration plant design studies.

He serves on the Nuclear Standards Board of the American National Standards Institute and is a former member of the Institute's Executive Standards Council. He is a member of the American Society of Mechanical Engineers.

Shirley J. Olinger has 8 years experience in nuclear facility safety analysis, technical specification and operational safety requirements, reactor operations, operational readiness reviews, radiological controls, procedures, and nuclear systems. She is a supervisory nuclear engineer at the DOE Rocky Flats Office. She was also the supervisory nuclear engineer at the Savannah River Restart Office. In these two positions, she has evaluated management and organizational performance in implementing DOE safety requirements. Prior to these positions she served as a DOE Headquarters site representative at Savannah River and as a nuclear engineer for various DOE offices. Ms. Olinger also was a supervisory nuclear engineer at the Pearl Harbor Naval Shipyard.

James P. O'Reilly is a nuclear operations management expert with 32 years of experience. Mr. O'Reilly served in the U.S. Navy nuclear power program, served in the Atomic Energy Commission and the NRC for 23 years as the Chief Reactor Inspector and Regional Administrator for Regions I and II, and managed the nuclear operations program for the Georgia Power Company as Senior Vice President. Mr. O'Reilly directly participated in the response to the Three Mile Island accident and many of the abnormal operational occurrences that have occurred at commercial nuclear power plants. He received the NRC Meritorious and Distinguished Service Awards and the Presidential Meritorious Service Award. Since early 1988, Mr. O'Reilly has been a full-time nuclear management consultant. He has provided services to problem nuclear plants, law firms, consulting firms, and the U.S. Government.

David M. Pinkston is a chemical engineer with more than 7 years experience in nuclear power plant operations and safety. He served for 5 years in the U.S. Naval Nuclear Propulsion Program where he qualified as Chief Engineer for nuclear cruise propulsion plants and gained experience in supervising reactor plant operations and maintenance. Mr. Pinkston was an operations liaison engineer at the Savannah River Site plutonium production facility, where he coordinated the design, management, and technical support needed for major projects and upgrades in the areas of plutonium processing and waste handling. Since October 1989, he has worked as a consulting engineer for SAIC providing technical support and programmatic analysis for DOE. Specific activities include review and development of operational safety requirements for various DOE facilities and development of detailed reporting criteria for a new DOE incident reporting system.

Eugene F. Redden has an M.S. in engineering management, and is a nuclear engineer with over 32 years experience with the Air Force, DOE and predecessor organizations, and the commercial nuclear power industry. His analytical, management,

and consulting services have covered a broad spectrum of activities, including nuclear power plant operations, tritium processing and handling, packaging and transport of nuclear materials, disposal of nuclear waste, conduct of Operational Readiness Reviews, and the review and critique of Safety Analysis Reports. Mr. Redden has participated in Operational Readiness Reviews as a technical expert in training and operations for the Remote Mechanical C Line at Richland, the Neptunium Processing Line at Savannah River, the Fluorine Dissolution Facility at Idaho, the Enriched Uranium Conversion Facility at Oak Ridge, the Engineered Demonstration System at Livermore, the High Flux Isotope Reactor, and the High Flux Beam Reactor. He has also participated in several DOE training initiatives, including Training Resource and Data Exchange (TRADE).

John W. Robinson has 10 years experience in performance-based training for nuclear operations, radiation protection, and industrial safety. As Manager, Fuel Dissolution Processing and Nuclear Safety Training at Westinghouse Idaho Nuclear Company, Mr. Robinson is responsible for coordination, development, and implementation of operations training for fuel processing, fuel handling, waste processing, and radiological and nuclear safety training courses for all levels of company personnel. Mr. Robinson has been involved in several DOE training initiatives, including the development of the Training Resource and Data Exchange (TRADE) Special Interest Group on Radiation Protection Training, served as coordinator and principal author of the DOE Guide to Good Practice in Radiation Protection Training; and functioned as a lead developer of the DOE Training Accreditation Program. He currently serves on the DOE TRADE Executive Committee. In October 1988, Mr. Robinson received the "Jack M. Brewer" award from DOE for individual excellence in human resource development, primarily for his efforts in training.

James A. Shurick is a fire protection and safety engineer with 41 years of experience. He worked for 20 years with Factory Insurance Association (now Insurers Risk Insurance) as a Field Inspector and Chief Engineer. Mr. Shurick served the Atomic Energy Commission and the DOE for 19 years as a fire protection design engineer and was responsible for fire protection requirements in the construction of new facilities and the modification of existing facilities. Engineering efforts included improvement to water supplies, sprinkler protection, heat and smoke detection, special protection and construction, exit requirements, and emergency lighting.

Joseph F. Tinney has a Ph.D. in Engineering Sciences and 25 years of Defense Programs experience, the last 8 years as the Program Manager for SAIC's technical support services in DOE's Office of Defense Programs. Since joining SAIC, Dr. Tinney has been the Principal Investigator on projects for the Defense Nuclear Agency, the Nuclear Regulatory Commission, and the Federal Emergency Management Administration. Dr. Tinney has served on, and provided technical support for, the Plutonium Special Isotope

Separation (SIS) Program Peer Review (1982), the SIS Process Readiness Review Team (1988), the New Production Reactor (NPR) Site Evaluation Team (1988), and the Technical Support Team for the Energy Research Advisory Board's NPR Technology Assessment Panel (1987-1988). Dr. Tinney worked for 12 years at the Lawrence Livermore National Laboratory. He served as the Head of the Hazards Control Department supervising 200 health, safety, and environmental personnel; served as Safety Review Team Leader for the design and construction of a new plutonium facility; served as a Senior Scientific Advisor on the Nuclear Weapons Accident Response Group and Nuclear Emergency Search Team; and served as Division Director for the Special Projects Division.

Gary J. Toman is an electrical engineer with 20 years of experience. He has 10 years experience in commercial nuclear power plant operations and a total of 14 years experience in commercial nuclear power plant licensing, maintenance, equipment qualification, quality assurance, component failure evaluation, and safety-system functional inspections. Most recently, Mr. Toman led a functional assessment of the electric power distribution system for Palo Verde Nuclear Generating Station. He has broad experience with verification of equipment operability and has developed a nondestructive test methodology for evaluating aging of installed electrical cable insulation. Mr. Toman has also contributed to the NRC's Nuclear Plant Aging Research Program in the areas of relays, circuit breakers, solenoid valves, and pressure transmitters. He evaluated reactor trip circuit breaker failures for the U.S. Nuclear Regulatory Commission at the Salem Nuclear Generating Station and the San Onofre, McGuire, North Anna, and D.C. Cook plants. He is a Principal Engineer with ERC Environmental and Energy Services Company.

Arthur J. Toy has a Ph.D. in Radiation Biophysics and has worked at Lawrence Livermore National Laboratory for 27 years. He is the Facility Manager of LLNL's Plutonium Facility, where he is responsible for assuring environmental and personnel safety for all operations in the Facility. In a previous position, as the Hazards Control Department Head/Safety Program Leader, Dr. Toy was responsible for assuring implementation of the LLNL's Safety Program. Dr. Toy also managed environmental monitoring of LLNL and local environs, environmental assessments of Laboratory construction, and Laboratory compliance with all Federal, State and local environmental regulations. He has written safety analysis reports for nuclear facilities and was the editor of the LLNL Environmental Impact Statement.

Lance E. Traver is a nuclear engineer with 7 years experience. Mr. Traver served in the U.S. Naval Nuclear Propulsion Program for 5 years where he developed an understanding of reactor operations and safety principles. He qualified as Chief Engineer and Senior Supervisor of Naval Nuclear Propulsion Plants. As an employee of SCIENTECH, Inc., he has participated in evaluating the reactor

restart program for the Savannah River Site Production Reactors and has conducted root cause analyses of safety issues at both the Savannah River Site and Rocky Flats Plant. Mr. Traver provided technical support to the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Lawrence J. Ybarrodo is a Ph.D. mechanical engineer with 30 years experience. Dr. Ybarrodo worked in nuclear facility design, construction, analysis, testing, and operations at the Idaho National Engineering Laboratory. He held the position of Associate General Manager of EG&G, Idaho, and was in charge of the operations of four nuclear reactor facilities. He has served on the Board of Directors of the American Nuclear Society and on its executive committee on nuclear reactor safety. Dr. Ybarrodo assisted the U.S. Government in responding to the accidents at Three Mile Island and Chernobyl. He was the Deputy Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plants.

Appendix B—Assignments

To be provided at a later date.

Appendix C—References

1. "Guidelines for Application of Readiness Reviews to Department of Energy Activities," January 1987.
2. "Process Operational Readiness and Operational Readiness Follow-On," DOE-76-45/39, SSDC-39, February 1987.
3. *Occupancy-Use Readiness Manual*, "Safety Considerations," ERDA-76-45-1, SSDC-1, September 1976.
4. "Events and Causal Factors Charting" (regarding management oversight and risk tree development and use), DOE-76-45/14, SSDC-14, Rev. 1, August 1978.
5. *Mort User's Manual* (for use with management oversight and risk tree analytical logic diagram), DOE-76-45/4, SSDC-4, Rev. 2, May 1983.
6. "Operational Readiness Assessment Team Inspections," NRC Inspection Procedure 93806, August 21, 1989.
7. *Guidelines for the Conduct of Operations at Nuclear Power Stations*, Guideline INPO 85-017, Rev. 01, April 1988.
8. Memorandum from Victor Stello, Jr., to R. Nelson, "Order Compliance Verification at the Rocky Flats Plant," May 3, 1990.
9. "Technical Safety Appraisal of the Rocky Flats Plant," DOE/EH-0061, January 1989.
10. "An Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant," SCIE-DOE-201-89, July-September 1989.
11. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding resumption of plutonium processing operations at the Rocky Flats Plant), May 4, 1990.
12. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding criticality safety and resumption of plutonium processing operations at the Rocky Flats Plant), June 5, 1990.
13. Advisory Committee on Nuclear Facility Safety, letters to the Secretary of

Energy regarding resumption of plutonium processing operations at Rocky Flats, dated November 30, 1989, March 28, 1990, and June 4, 1990.

14. Memorandum to Acting Assistant Secretary for Defense Programs from Secretary of Energy regarding "Resumption of Plutonium Processing at the Rocky Flats Plant," June 5, 1990.

15. "Environmental Tiger Team Assessment of the Rocky Flats Plant," June 6 to July 21, 1989.

16. Letter from Secretary of Energy to the Defense Nuclear Facilities Safety Board, "Response to May 4, 1990, Recommendation," June 20, 1990.

17. "Rocky Flats for Phased Resumption of Plutonium Operations," EG&G Rocky Flats, March 5, 1990 (including the April 19, and May 25, 1990 updates).

[FR Doc. 91-5024 Filed 3-1-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10551-000 New York]

City of Oswego, Availability of Environmental Assessment
February 25, 1991

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the constructed and proposed High Dam Project located on the Oswego River in Oswego County, near the City of Oswego, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA the Commission's staff has analyzed the potential environmental impacts of the constructed and proposed project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 91-4977 Filed 3-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3924-020, et al.]

Hydroelectric Applications (Malad Hydro Partners, et al.); Applications

Take notice that the following hydroelectric applications have been

filed with the Commission and are available for public inspection:

1a. *Type of Application:* Surrender of license.

b. *Project No.:* 3924-020.

c. *Date filed:* December 18, 1990.

d. *Applicant:* Malad Hydro Partners.

e. *Name of Project:* Malad High Drop.

f. *Location:* On the Malad River in Gooding County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Kip W. Runyan, Malad Hydro Partners, 333 N. 13th Street, Boise, ID 83702, (208) 336-4254.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* April 11, 1991.

k. *Description of Proposed Action:* The proposed run-of-the-river project would have consisted of a diversion, a penstock, and a powerhouse. The Licensee seeks to surrender its license because it will be impossible to meet the deadline for start of construction.

The Licensee states that no construction has been done.

1. *This notice also consists of the following standard paragraphs:* B, C, and D2.

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10445-001.

c. *Date filed:* October 28, 1990.

d. *Applicant:* City of Utica Board of Water Supply.

e. *Name of Project:* Utica Water Line Hydroelectric Project.

f. *Location:* On the Hinckley dam on West Canada Creek, in Trenton, Oneida County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Russell LaGalbo, P.E., Principal Engineer, City of Utica, Board of Water Supply, P.O. Box 345, One Kennedy Plaza, Utica, NY 13503, (315) 792-0320.

i. *FERC Contact:* Mary Golato (202) 219-2804.

j. *Comment Date:* March 25, 1991.

k. *Description of Project:* The proposed project would be located on existing water supply conduits supplying water to the City of Utica through parallel 36-inch and 24-inch diameter iron pipes that run from the intake at the Hinckley dam to the Marcy reservoir. The applicant proposes to install facilities to develop the hydroelectric potential of the existing primary water supply mains between the two reservoirs. The facilities will consist of two powerhouses each containing a single in-line turbine generator, butterfly valve, and control center. One generating unit, to be installed in the upstream powerhouse, will have a rated capacity of 185

kilowatts. The other generating unit, to be installed in the downstream powerhouse, will have a rated capacity of 275 kilowatts. The Hinckley dam is owned by the State of New York. The applicant estimates that the average annual generation for the proposed project is 2,157,000 kilowatthours.

1. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3b.

3a. *Type of Application:* Major License.

b. *Project No.:* 10981-000.

c. *Date filed:* July 31, 1990.

d. *Applicant:* Bangor Hydroelectric Company.

e. *Name of Project:* Basin Mills.

f. *Location:* On the Penobscot and Stillwater Rivers, in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Robert S. Briggs, Bangor Hydroelectric Company P.O. Box 932, Bangor, ME 04401, (207) 945-5621.

i. *FERC Contact:* Mary C. Golato, (202) 219-2804.

j. *Comment Date:* April 15, 1991.

k. *Description of Project:* The proposed project would consist of three developments: (1) Veazie Development; (2) Basin Mills Development; and (3) Orono Development. The existing dams are owned by the applicant. The Veazie and Orono Developments are operating under annual licenses for Projects Nos. 2403 and 2710, respectively. The license for Project No. 10981, if issued, would supersede the licenses for Projects Nos. 2403 and 2710.

(i) Veazie Development

The Veazie Development would consist of: (1) An existing 25-foot-high, 902-foot-long concrete gravity dam; (2) a reservoir with a surface areas of 390 acres, a storage capacity of 4,800 acre-feet, and a normal water surface elevation of 34.8 feet NGVD with; (3) 6.5-foot-high hinged flashboards; (4) an existing concrete forebay; (5) two existing brick and concrete powerhouses; (a) powerhouse A is located along the west bank and contains 15 turbine-generator units for a total installed capacity of 5.4 MW; and (b) powerhouse B is located at the downstream end of the forebay and contains two turbine-generator units with a total installed capacity of 3 MW; (6) a proposed reinforced concrete powerhouse (powerhouse C) containing a turbine-generating unit of approximately 8 MW; (7) and existing tailrace; (8) a transmission line, 200 feet long; and (9) appurtenant facilities.

The average annual generation would be 87 million kWh.

(ii) Basin Mills Development

The Basin Mills Development would consist of: (1) A new 18-foot-high, 1,850-foot-long concrete gravity dam; (2) a reservoir with a surface area of 325 acres, a storage capacity of 5,000 acre-feet, and normal water surface elevation of 64.0 feet NGVD; (3) a new intake gate; (4) a new concrete powerhouse containing three pit-type turbine units with a total installed capacity of 38 MW; (5) a transmission line, 200 feet long; and (6) appurtenant facilities. The average annual generation would be 183 million kWh.

(iii) Orono Development

The applicant proposes to decommission the existing facilities at the Orono Development by removing the existing penstocks and powerhouse. The applicant proposes to retain the existing 18-foot-high, 1,174-foot-long concrete dam and flashboards and the 175-acre, 1,300 acre-foot reservoir which is at elevation 72.4 feet NGVD.

1. The Veazie and Orono Projects would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the applicant's net investment as of December 1988, the net investment for the Orono development is \$641,822 and the net investment for the Veazie development is \$1,109,601. The estimated severance damages for the combined developments would amount to \$1,100,000.

m. Agency Comments—Agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, affected Indian tribes, and state in which the project is located, affected Indian tribes, and states are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act (Act), as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical

data filed with the Commission, along with the recommendations, to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that the Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, the Commission will presume that the agency has none. One copy of an agency's response must also be sent to the applicant's representatives.

Since several studies have not been completed and the results are necessary for the agencies and other commenters to have sufficient information to make informed comments and recommendations on the project, we will request comments in a future public notice after the studies are filed with the Commission. Agencies and other commenters will be allowed to submit their comments (including mandatory and recommended terms and conditions or prescriptions) on the application no later than 60 days after issuance by the Commission of this second notice.

n. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

4a. Type of Application: Preliminary Permit.

b. Project No.: 11065-000.

c. Date filed: December 24, 1990.

d. Applicant: Greenfields Irrigation District.

e. Name of Project: Turnbull Drops.

f. Location: On the U.S. Bureau of Reclamation's Spring Valley Canal at the Turnbull Drop Structures in Teton County, Montana, Township 21 North, Range 4 West.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Jerry Nypen, Manager, Greenfields Irrigation District, P.O. Box 157, Fairfield, MT 59436, (406) 487-2533.

i. FERC Contact: Mr. James Hunter, (202) 219-2839.

j. Comment Date: April 30, 1991.

k. Description of Project: The proposed project would include generating facilities at each drop structure, consisting of: (1) A nine-foot-diameter, 1,100-foot-long penstock leaving the existing intake structure at the upper site and running parallel to the

drop chute; (2) a powerhouse on the canal containing a generating unit rated at 4,200 kilowatts; (3) a 1.5-mile-long transmission line interconnecting with a local distribution line; and (4) a similar facility at the lower site, except that the penstock would be 2,200 feet long and the generating unit would be rated at 6,300 kilowatts. The applicant estimates the average annual energy generation to be 24 gigawatthours and the cost of the work to be performed under the permit to be \$75,000.

l. Purpose of Project: Power generated would be sold to a utility, most likely the Montana Power Company.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 11069-000.

c. Date filed: December 31, 1990.

d. Applicant: Risingdale Hydroelectric Co.

e. Name of Project: Risingdale.

f. Location: On the Housatonic River in the Town of Great Barrington, Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Mathew Rubin, 28 State Street, Montpelier, VT 05602, (802) 229-4666.

i. FERC Contact: Charles T. Raabe, (202) 219-2811.

j. Comment Date: April 15, 1991.

k. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high, 130-foot-long concrete and timber-crib, overflow-type dam; (2) a reservoir having a surface area of 20 acres at normal water surface elevation 717 feet NGVD; (3) an existing gated intake structure having trashracks; (4) an existing 14-foot-diameter penstock; (5) a proposed powerhouse containing a generating unit having an installed capacity of 1,200-kW operated at a 21-foot head; (6) a tailrace; (7) a 350-foot-long, 13-kV transmission line; and (8) appurtenant facilities.

The applicant estimates that the average annual generation would be 5,000,000 kWh and that the cost of the studies under the permit would be \$150,000. Project energy would be sold to one or more electric utilities located in Massachusetts. The existing dam is owned by Rising Paper Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 11072-000.

c. Date filed: January 8, 1991.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Boyd Dam Hydroelectric Project.

f. Location: East Branch of the Fish Creek, in the Town of Lewis, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Steven C. Samel, P.O. Box 169, Prospect, NY 13435, (315) 896-6351.

i. FERC Contact: Mary C. Golato (tag), (202) 219-2804.

j. Comment Date: April 18, 1991.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing 85-foot-high, 515-foot-long dam; (2) an existing reservoir having a surface area of 210 acres, a storage capacity of 4,345 acre-feet, and a surface elevation of 1,280 feet NGVD; (3) a proposed 60-foot-long by 7-foot-diameter penstock; (4) a proposed powerhouse containing a horizontal turbine-generator set with a total installed capacity of approximately 2,750 kilowatts; (5) a proposed 34.5-kilovolt transmission line; and (6) appurtenant facilities. The dam is owned by the City of Rome, New York. The applicant expects that the proposed facility would generate an average annual generation of 8.5 million kilowatt-hours. The applicant estimates that the total cost of the proposed project would be \$6 million.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: 11078-000.

c. Date Filed: January 23, 1991.

d. Applicant: H&H Properties.

e. Name of Project: Avalon Hydroelectric Project.

f. Location: On Mayo River near Mayodan in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Tim Henderson, 1240 Springwood Church Road, Gibsonville, NC 27249, 919 449-5054.

i. FERC Contact: Michael Dees, (202) 219-2807.

j. Comment Date: April 22, 1991.

k. Description of Project: The proposed run-of-river project would consist of: (1) an existing stone masonry dam 436 feet long and 18 feet high with proposed flashboards one foot high; (2) a 12-acre reservoir with a normal surface elevation of 625.5 feet m.s.l. with flashboards installed; (3) a 60-kW hydropower unit to be installed at the dam; (4) an existing power canal 1,800

feet long and 20 to 26 feet wide; (5) an existing penstock nine feet in diameter and 180 feet long; (6) an existing powerhouse containing two hydropower units with a generating capacity of 780 kW; (7) an existing tailrace; (8) a new 12.4-kV transmission line 280 feet long; and (9) appurtenant facilities. The applicant estimates the average annual energy production to be 3.6 GWh and the cost of the work to be performed under the preliminary permit to be \$15,000. The project energy would be sold to Duke Power Company. The dam is owned by the applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 11079-000.

c. Date Filed: January 24, 1991.

d. Applicant: Charles C. Wood, Jr.

e. Name of Project: Old Washington Mills Hydro Project.

f. Location: On Mayo River near Mayodan in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Charles C. Wood, Jr., 4010 Lagrange Drive, Greensboro, NC 27406, 919-275-7613.

i. FERC Contact: Michael Dees, (202) 219-2807.

j. Comment Date: April 22, 1991.

k. Description of Project: The proposed run-of-river project would consist of: (1) an existing stone masonry dam 460 feet long and 15 feet high with proposed flashboards one foot high; (2) an 11-acre reservoir with a normal surface elevation of 586.4 feet m.s.l. with flashboards installed; (3) a 60-kW hydropower unit to be installed at the dam; (4) an existing power canal 1,400 feet long and 25 feet wide; (5) a new powerhouse containing two hydropower units with a generating capacity of 720 kW; (6) an existing tailrace; (7) a new 12.4-kV transmission line 170 feet long; and (8) appurtenant facilities. The applicant estimates the average annual energy production to be 2.7 GWh and the cost of the work to be performed under the preliminary permit to be \$15,000. The project energy would be sold to Duke Power Company. The dam is owned by the applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for

the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number

of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described

application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies), for the purposes set forth in section 408 of the Energy Security Act of 1990, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 26, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4978 Filed 3-1-91; 8:45am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the proposed procedures to be followed in refunding to adversely affected parties \$177,813.96, plus accrued interest, in crude oil overcharge funds that Corum Energy and Davis & Forbes remitted to

the DOE pursuant to a Consent Order executed on January 3, 1990 and an Agreed Judgment executed on June 22, 1988, respectively. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the *Federal Register* and should be addressed to: Office of Hearings, and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Numbers LEF-0017 (Corum Energy) and LEF-0021 (Davis & Forbes).

FOR FURTHER INFORMATION CONTACT:

Richard T. Tedrow, Deputy Director, Anthony W. Swisher, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Swisher).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil monies that have been remitted by Corum Energy and Davis & Forbes to the DOE to settle alleged violations of the federal petroleum price and allocation regulations. The DOE is currently holding the full payment of \$177,813.96 in an interest-bearing escrow account pending distribution.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the *Federal Register* and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Corum Energy, Davis & Forbes.

Dates of Filing: July 17, 1990, July 19, 1990.

Case Numbers: LEF-0017, LEF-0021. Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

This Decision and Order considers two Petitions for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The first petition deals with monies obtained from Corum Energy (Corum) (Case No. LEF-0017). Corum remitted \$10,182.06 to the DOE pursuant to a January 3, 1990 Consent Order entered into by Corum and the DOE. This Consent Order resolved allegations that Corum committed violations of the federal petroleum price and allocation regulations during the period February 26, 1980 through January 27, 1981 (Consent Order number 6AOX0032W). The second petition concerns monies received from Davis & Forbes (D&F) (Case No. LEF-0021). D&F remitted \$167,831.90 pursuant to a June 22, 1988 Agreed Judgment between D&F and the DOE settling all claims that D&F had violated the federal petroleum price and allocation regulations during the period September 1, 1973 through April 30, 1978 (Agreed Judgment number 610C00405W). Together, Corum and D&F remitted a total of \$177,813.96 to the DOE. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see

Office of Enforcement, 9 DOE ¶82,508 (1981) and *Office of Enforcement*, 8 DOE ¶82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from Corum and D&F, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. See Order implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to

receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, see, e.g., *New York Petroleum, Inc.*, 18 DOE ¶85,435 (1988); *Shell Oil Co.*, 17 DOE ¶85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987). The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323-24. The states appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (T.E.C.A. 1988).

II. The Proposed Refund Procedures

A. Refund Claims. We now propose to apply the procedures in the April 1987 Notice to the crude oil monies that are the subject of the present determination. As noted above, \$177,813.96 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or \$35,562.79 in principal, plus accrued interest for direct refunds to claimants, in order to ensure that sufficient funds will be available for

refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. See *A. Tarricone Inc.*, 15 DOE ¶ 85,495, at 88,893-96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. See *New York Petroleum*, 18 DOE at 88,701-03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE

¶ 85,214, at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, *affd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination (\$177,613.96) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of \$0.0000008798 per gallon for the two proceedings involved in this determination. The use of this approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.*

As we have stated in previous Decisions, a crude oil refund applicant is required to submit only one application for crude oil overcharge funds. See *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988, was established for all refund applications for the first pool oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989, was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,588, *Corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *Corrected*, 19 DOE ¶ 85,236 (1989). A March 31, 1991 deadline for filing an application for refund from the third pool of funds was set in *Cibro Sales Corp., Inc.*, 20 DOE ¶ 85,036 (1990). A June 30, 1992 deadline for filing an application for refund from the fourth pool of funds was set in *Quintana Energy Corporation*, 21 DOE

* The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscalcifications throughout the domestic refining industry. See *Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

¶ _____ (January 18, 1991). The volumetric refund amount from the fourth pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the *Federal Register*.

B. *Payments to the States and Federal Government.* Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision or \$142,251.17 in principle, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or \$71,125.59 into an interest-bearing subaccount for the states and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches \$10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by Corum Energy and Davis & Forbes, pursuant to the Consent Order executed on January 3, 1990 and the Agreed Judgment executed on June 22, 1988, respectively, will be distributed in accordance with the foregoing Decision.

[FR Doc. 91-5025 Filed 3-1-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3910-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that

the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 3, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks (EPA ICR #1285.03; OMB #2060-0132). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers may choose to pay a monetary penalty in order to sell heavy-duty engines, heavy-duty vehicles, including light-duty trucks, which fail to conform with certain emission standards. Before selling these engines, manufacturers must perform a Production Compliance Audit to establish the amount of the penalty. Each audit includes the following information: a report from manufacturer requesting an audit, a description of test equipment and facilities, information regarding each audit conducted, a report of the test results, a failed engine or vehicle report, and a quarterly nonconformance penalty report. EPA uses this information to ensure that the Production Compliance Audits are conducted in accordance with the applicable regulation and to ensure that nonconformance penalty payments submitted to EPA are correct.

Burden Statement: The public reporting burden for this collection of information is estimated to average 144 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.

Respondents: Manufacturers of heavy-duty engines and heavy-duty vehicles (SIC #371).

Estimated Number of Respondents: 6.
Estimated Total Annual Burden on Respondents: 906 hours.

Frequency of Collection: Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy

Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 1725 17th Street, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1577.01; section 114 Request for HCFC-123 Production Data; was approved 01/30/91; OMB #2060-0215; expires 07/31/91.

EPA ICR #1128.03; Information Requirements for Secondary Lead Smelters (NSPS subpart L); was approved 01/18/91; OMB #2060-0080; expires 01/31/94.

EPA ICR #0818-04; Hazardous Waste Industry Studies; was approved 01/17/91; OMB #2050-0042; expires 01/31/94.

EPA ICR #0270-24; Public Drinking Water System Program Information; was approved 01/10/91; OMB #2040-0090; expires 12/31/93.

EPA ICR #1361.02; Final Rule to Regulate the Burning of Hazardous Waste in Boilers and Industrial Furnaces; was approved 01/14/91. However, there are additional burdens associated with the general permitting process that are not reflected in this ICR. This additional burden must be reflected in the OMB inventory for the ICRs associated with general permitting requirements. The approval of this ICR (2050-0073) is contingent, therefore, on the submission prior to July 1, 1991, of information correction work sheets which reflect the additional permitting requirements.

Dated: February 26, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-5015 Filed 3-1-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-280004; FRL 3877-1]

PCB State Enhancement Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Review.

SUMMARY: The EPA's Office of Toxic Substances is announcing a financial assistance program for States entitled the "PCB State Enhancement Grant Program". The grants will be awarded under the authority of section 28 of the Toxic Substances Control Act (TSCA) for the establishment of a PCB program that includes the development of state legislation and regulations. This

program is intended for States that have begun to identify waste PCBs as a hazardous waste. The PCB State Enhancement Grant Program is not being assigned a Catalog of Federal Domestic Assistance number because it is not expected to be continued beyond fiscal year 1992. The program objective is to promote state participation in the PCB disposal program. EPA believes that state enhancement, through the encouragement of state regulations for PCB disposal, is a desirable tool for risk reduction. A state presence in PCB disposal will expedite the identification and remediation of potential risks. The Agency is also announcing its plans to administer this program through its Headquarters office. This Federal Register notice informs potential applicants about the grant program and invites them to request a copy of the application kit and the companion guidance document. Subject to the availability of funds, the awards are anticipated during Federal fiscal year 1991. Eligible applicants will include the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. ("States" is used in this announcement to refer to all eligible applicants.) Recipients will be required to provide a match of 25 percent of the total project cost.

DATES: Applications must be received in the Grants Operations Branch by the close of business on May 15, 1991. Applications may not be considered if received after the deadline.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551. State agencies wishing to apply under this program should send a letter of intent and request an application from this address. State agencies may contact this address in order to coordinate the development of their project proposal with EPA Headquarters.

ADDRESSES: Send completed applications to PCB State Enhancement Grant Program, Grants Operations Branch, Grants Administration Division (PM-216F), US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances is interested in promoting State regulation of PCB

disposal activities, and to the extent that funds become available, is offering financial assistance for this purpose. This program is designed to encourage the development of State legislation and regulations. The minimum criteria for applicants includes: (1) States in which there are existing PCB disposal and storage facilities, and (2) States that have already begun to identify waste PCBs as a hazardous waste and anticipate completion of the process by September 30, 1992. To be eligible for these grants, States must currently be engaged in the process of listing PCBs under their State hazardous waste laws or they must currently be in the process of adopting TSCA look-alike laws for PCB disposal. It is anticipated that individual grants will be awarded for no more than \$50,000.

The State's Single Point of Contact (SPOC), must notify the following office in writing within 30 days after publication of this notice in the *Federal Register*. The SPOC notification concerns whether their States' official E.O. 12372 process will review applications under this program. The SPOC notification should be sent to the Grants Policies and Procedures Branch, Grants Administration Division (PM-216F), US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: Corinne Allison/PCB State Enhancement Grant Program.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if their applications are subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOC's should send official intergovernmental review comments on applications to the Grants Operations Branch, Grants Administration Division (PM-216F) US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, no later than 60 days after receipt of the application or other material for review.

Dated: February 25, 1991.

Victor J. Kimm,
Acting Assistant Administrator for Pesticides
and Toxic Substances.

[FR Doc. 91-5011 Filed 3-1-91; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 22, 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: 3060-0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Action: Extension.

Respondents: Business or other for-profit.

Frequency of Response: Annually and Other: Corrections are reported 3 months after the annual filing.

Estimated Annual Burden: 48 responses; 15.8 hours average burden per response; 759 hours total annual burden.

Needs and Uses: The collection of § 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, and 47 U.S.C. 151-609 (1981). The collected data are essential to both the FCC and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31 pursuant to § 43.61(d).

OMB Number: 3060-0403.

Title: Certification of Completion of Construction Under part 21.

Form Number: FCC Form 494-A.

Action: Revision.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 5,000 responses; .33 hours average burden per response; 1,666 hours total annual burden.

Needs and Uses: FCC Form 494-A is used by telecommunications entities to notify the Commission that construction of the conditionally licensed facility has been completed and it is operational. The form is used to certify completion of construction in the following Part 21 services: Point-to-Point Microwave; Local Television Transmission Service; Multipoint Distribution Service; Digital Electronic Message Service; and Fixed Subsidiary Communications Authorizations. The data will be used by FCC staff to verify completion of construction and the obligations in the conditional license. Without such information, the FCC would not be able to determine whether the licensee has fulfilled the construction conditions contained in its authorization or if the licensee has automatically forfeited its authorization. If there is an automatic forfeiture, new initial applications may be filed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-4953 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 25, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission 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 this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB number: 3060-0107.

Title: Application for Renewal of Radio Station License and/or

Notification of Change of License Information.

Form number: FCC Form 405-A.

Action: Extension.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 2,700 responses; 1.66 hours average burden per recordkeeper; 448 hours total annual burden.

Needs and uses: The FCC Form 405-A is filed by applicants in the Private Land Mobile, Coast, Ground, and General Mobile Radio Services for renewal of an existing authorization. Commission personnel will use the data to determine eligibility for a renewal authorization and issue a radio station license. The data is also used by Compliance personnel in conjunction with field engineers for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5035 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 26, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission 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 this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB number: 3060-0207.

Title: Sections 73.961 and 73.932, Tests of the Emergency Broadcast System and Radio Monitoring and Attention Signal Transmission Requirements.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: Recordkeeping requirement.

Estimated annual burden: 12,500 recordkeepers; 1.25 hours average

burden per recordkeeper; 15,625 hours total annual burden.

Needs and uses: Sections 73.961 and 73.932, requires that all broadcast stations log transmission and receipt of the weekly EBS Test and receipt of the semi-monthly wire service test. This information is necessary in order to document station compliance with these Rules and to help to enhance station awareness and participation in the National, State and local Emergency Broadcast System (EBS). The data is used by FCC staff as part of their routine inspections of broadcast stations. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part of the transmitting or receiving station (or wire service). Furthermore, the National level EBS is solely for the use of the President, its proper operation must be assured.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5036 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane,

Rockville, Maryland 20857; tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an onsite inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800-627-8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900

The certification of this laboratory (Bio-Analytical Technologies, Chicago, IL) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 2183 (Jan. 22, 1991).

- Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810
- Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117
- Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500
- Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917
- CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263
- Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)
- Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214-929-0535
- Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006
- DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310
- Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-9800
- ElSchly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609
- Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205-9998, 205-934-0985
- General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267
- Harris Medical Laboratory, P. O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600
- HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-225-9414 (outside MI)/800-328-4142 (MI only).
- Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672
- Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (CA only) (name changed: formerly Abused Drug Laboratories)
- Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961
- Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203-334-6187
- Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631
- Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800-251-0089
- Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200
- MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515
- MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612-636-7466
- Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439
- Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309-672-4928
- MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888
- MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000
- MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191
- National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed: formerly Maryland Medical Laboratory, Inc.)
- National Health Laboratories Inc., 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (NC only)
- National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492
- National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250
- Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050 (name changed: formerly Nichols Institute)
- Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361
- Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134
- Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4680
- Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99208, 509-926-2400
- PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201-769-8500
- PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177
- Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600
- Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400
- Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537
- Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061
- The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).
- Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770
- Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303-792-2822

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800-631-5250

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286

S.E.D. Medical Laboratories, 500 Walter NE Suite 500, Albuquerque, NM 87102, 505-848-8800

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010 (name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314-882-1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305-593-2260

Charles R. Schuster,
Director, National Institute on Drug Abuse.
[FR Doc. 91-5133 Filed 3-1-91; 8:45 am]
BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91F-0032]

Th. Goldschmidt A.G.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Th. Goldschmidt A.G. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of silicone acrylate resins in coatings for metal substrates, polyolefin films, and paper and paperboard.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4244) has been filed by Th. Goldschmidt A.G., Goldschmidtstrasse, 100 D-3400 Essen 1, Germany, proposing that the food additive regulations be amended to provide for the safe use of silicone acrylate resins for use in coatings for metal substrates, polyolefin films, and paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 25, 1991.

Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-4987 Filed 3-1-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Hospital Conditions of Participation;

Form Number: HCFA-R-48; *Use:* These requirements contained in parts of the "conditions of participation" for hospitals (42 CFR part 482) are used to determine whether a hospital qualifies for a provider agreement under Medicare and Medicaid; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 6,700; *Average Hours per Response:* 9.35; *Total Estimated Burden Hours:* 62,657.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in BPO-500-F, Third Party Liability (TPL) for Medical Assistance, FFP Rates for Skilled Nursing Professional Medical Personnel and Supporting Staff, and Sources of State Share of Financing; *Form Number:* HCFA-R-78; *Use:* This regulation requires the State Medicaid agency to have a written agreement with other public agencies which perform Medicaid functions and to specify in the State plan the threshold amount for suspending TPL recovery; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 52; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 52.

3. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in the System Performance Review (Medicaid); *Form Number:* HCFA-R-86; *Use:* The System Performance Review is used to evaluate State Medicaid Management Information Systems to determine whether or not a State system satisfies the functional requirements and statistical levels of output relating to accuracy and timeliness; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 22; *Average Hours per Response:* 2,000 (recordkeeping); *Total Estimated Burden Hours:* 44,000.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form Number:* HCFA-2082; *Use:* This data is the basis of actuarial forecasts for Medicaid services utilization and costs; of analyses and cost savings estimates required for legislative initiatives relating to Medicaid; and for responding to requests for information from HCFA components, the Department of Health and Human Services, the press and the Congress; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 51;

Average Hours per Response: 430.13; *Total Estimated Burden Hours:* 21,937.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Physician Certifications/Recertification in Skilled Nursing Facilities (SNFs); *Form Number:* HCFA-R-5; *Use:* These regulations require SNFs to keep records of physician certifications and recertifications of information such as the need for care and services, estimated duration of the SNF stay, and plans for home care; *Frequency:* On occasion; *Respondents:* Individuals/households, State/local governments, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 93,857 (recordkeeping).

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospital Provider of Long Term Care Services (Swing-bed) Survey Report Form; *Form Number:* HCFA-1537C; *Use:* This survey form is an instrument used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal Government; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 375.

7. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements—Criteria for Medicare Coverage of Adult Liver Transplants; *Form Number:* HCFA-R-108; *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of adult liver transplants performed on Medicare beneficiaries; *Frequency:* On

occasion/annually; *Respondents:* Non-profit institutions and small businesses/organizations; *Estimated Number of Responses:* 73 (reporting) and 10 (recordkeeping); *Average Hours per Response:* 100 (reporting) and 20 (recordkeeping); *Total Estimated Burden Hours:* 7,300 (reporting) and 200 (recordkeeping) for a total of 7,500.

8. *Type of Request:* New; *Title of Information Collection:* Peer Review Organization (PRO) Business Proposal Forms; *Form Number:* HCFA-718, 719(1, 3, A-H, J-K), 720, 721, 722(1, 2, 3, S, UC) and 723(1, 2, 3, S); *Use:* This data will be used to compare and monitor reported and incurred costs and for negotiating contracts with the Peer Review Organizations; *Frequency:* Every 3 years; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 20; *Average Hours per Response:* 171; *Total Estimated Burden Hours:* 3,420 (annualized burden).

9. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements Concerning Medicaid Claims Processing Assessment System (CPAS); *Form Number:* HCFA-R-91, HCFA-331, HCFA-503, and HCFA-R-83; *Use:* The CPAS is a Federally-monitored and State-administered Medicaid Quality Control Program that evaluates the accuracy of each State's claims processing and payments; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 51; *Average Hours per Response:* 1,034; *Total Estimated Burden Hours:* 53,194 (reporting) and 12,991 (recordkeeping) for a total of 66,185 hours.

10. *Type of Request:* Extension; *Title of Information Collection:* Requests for Medicare Payments by Municipal Health Services Program (MHSP)

Clinics; Form Numbers: HCFA-127; 127A; *Use:* These forms are used by 15 clinics participating in the Municipal Health Services Program to bill and be reimbursed for services provided to Medicare beneficiaries; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 395,250; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 63,240.

11. *Type of Request:* New; *Title of Information Collection:* Medicaid Drug Rebate Program; *Form Number:* HCFA-367,(a),(b),(c); *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 10,000; *Average Hours per Response:* 3.41; *Total Estimated Burden Hours:* 34,167. The HCFA has received emergency approval by the OMB, under OMB approval number 0938-0578. In keeping with the requirements for emergency reviews, we are attaching a copy of the forms and instructions. Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 26, 1991.

Gail R. Wilensky,
Administrator, Health Care Financing
Administration.

BILLING CODE 4120-03-M

HCFA RECORD SPECIFICATION MFR PRICING INFORMATION TELECOMMUNICATIONS FORMAT—RECORD NO. 1

Field	Size	Position	Remarks
Record ID.....	1	1-1	Constant of "1".
Labeler code.....	5	2-6	NDC #1.
Product code.....	4	7-10	NDC #2.
Package size code.....	2	11-12	NDC #3.
Period covered.....	3	13-15	QYY.
Drug category.....	1	16-16	See data element definitions.
FDA Thera. EQ. CD.....	2	17-18	See data element definitions.
DESI Indicator.....	1	19-19	See data element definitions.
Drug type indicator.....	1	20-20	See data element definitions.
¹ Average Mfg price.....	11	21-31	99999V999999.
^{1,2} Best price.....	11	32-42	99999V999999.
² Baseline AMP.....	11	43-53	99999V999999.
Termination date.....	6	54-59	MMDDYY.
Correction flag.....	1	60-60	See data element definitions.
Filler.....	20	61-89	

¹ Zero filled and not used for Initial Submission.² Only for Single Source and Innovator Multiple Source Drugs, otherwise zero filled.

HCFA RECORD SPECIFICATION MFR PRICING INFORMATION TELECOMMUNICATIONS FORMAT—RECORD NO. 2

Field	Size	Position	Remarks
Record ID.....	1	1-1	Constant of "2".
Labeler code.....	5	2-6	NDC #1.
Product code.....	4	7-10	NDC #2.
Package size code.....	2	11-12	NDC #3.
Unit type.....	3	13-15	See data element definitions.
Units per pkg size.....	10	16-25	9999999V9999.
FDA approval date.....	6	26-31	MMDDYY.
Date Entered market.....	6	32-37	MMDDYY New item only.
Filler.....	43	38-80	

RECORD NO. 3

Field	Size	Position	Remarks
Record ID.....	1	1-1	Constant of "3".
Labeler code.....	5	2-6	NDC #1.
Product code.....	4	7-10	NDC #2.
Package size code.....	2	11-12	NDC #3.
Product name.....	63	13-75	FDA registration name.
Filler.....	5	76-80	

Enclosure C—Manufacturer Data Definitions*Data Element Name:* Labeler Code.*Data Definition:* First segment of National Drug Code that identifies the manufacturer, labeler, relabeler, packager, repackager or distributor of the drug.*Specifications:* Numeric values only, 5 digit field, right justified and 0-filled for 4-digit labeler codes.*Data Element Name:* Product Code.*Data Definition:* Second segment of National Drug Code.*Specifications:* Numeric values only, 4 digit field, right justified, zero filled.*Data Element Name:* Package Size Code.*Data Definition:* Third segment of National Drug Code.*Specifications:* Numeric values only, 2 digit field right justified, zero filled.*Data Element Name:* Period Covered.*Data Definition:* Calendar quarter and year covered by data submission.*Specifications:* Numeric 3-digit field, QYY.

Valid Values for Q:

1=January 1–March 31

2=April 1–June 30

3=July 1–September 30

4=October 1–December 31

Valid Values for YY: last two digits of calendar year covered.

For Baseline Data Submission, indicate third quarter of 1990 as 390.

Data Element Name: Product Registration Name.*Data Definition:* Product name as it appears on FDA registration form.*Specifications:* Alpha-numeric values, 63 characters, left justified.*Data Element Name:* Drug Category.*Data Definition:* Classification of drug for purposes of rebate calculations.*Specifications:* Alpha-numeric values, 1 character.

Valid Values:

N=Non-innovator Multiple Source

S=Single Source

I=Innovator Multiple Source

Data Element Name: DESI Drug Indicator.*Data Definition:* A DESI (Drug Efficacy Study Implementation) drug is any drug that lacks substantial evidence of effectiveness and is subject by the FDA to a Notice of Opportunity for Hearing (NOH). This includes drugs which are identical, related or similar to DESI drugs.*Specifications:* Numeric value, 1 digit.

Valid Values:

0=Not DESI drug

1=DESI drug

Data Element Name: Therapeutic Equivalence Explanation Code.*Data Definition:* The classification as contained in the FDA publication "Approved Drug Products with Therapeutic Equivalence Evaluations"

(the FDA Orange Book) for the last day of the calendar quarter for which the rebate payment is being made.

Specifications: Alpha-numeric values, 2 character field.

Valid Values:

AA
AB
AN
AO
AP
AT
BC
BD
BE
BN
BP
BR
BS
BT
BX
NR—Not rated

Data Element Name: Unit Type.

Data Definition: Basic measurement that represents the smallest unit by which the drug can be measured. The rebate amount will be calculated per unit.

Example: For drugs that are dispensed in capsules or tablets, the Unit Type would be a capsule or tablet. The rebate amount would be calculated per capsule or tablet. For liquids, the Unit Type would be a milliliter. The rebate amount would be calculated per milliliter.

Specifications: Alpha-numeric values, 3 character field, left justified.

Valid Values:

CAP—Capsule
CC—Cubic Centimeter
TAB—Tablet
GM—Gram
MCI—Millicurie
MG—Milligram
ML—Milliliter
SQ—Square Centimeter
UCI—Microcurie
UGM—Microgram
UM—Micromolar

Data Element Name: Units Per Package Size Code.

Data Definition: Total number of units, as defined in the Unit Type field, in the package represented by the package size code, or the third segment of the NDC code.

Example 1: For a drug dispensed in a package size of 100 cc, the unit type would be a cc, and the units per package size would be 100.

Example 2: For a 17 microgram inhaler, the unit type would be a microgram and the units per package size would be 17.

Specifications: Numeric values, 10 digit field: 7 whole numbers and 3 decimal places.

Data Element Name: AMP (Average Manufacturer's Price).

Data Definition: The Average Manufacturer's Price per unit *per product code only* for the period covered. If a drug is distributed in 3 package sizes, there will still be only one AMP for the product, which will be the same for all package sizes.

Specifications: Numeric values, 11 digit field: five whole numbers and 6 decimal places. Compute to 7 decimal places, and round to 6 decimal places.

Data Element Name: Baseline AMP (Average Manufacturer's Price).

NOTE: This is only required for Single Source and Innovator Multiple Source drugs, in initial submission, and for drugs approved by the FDA after 10/01/90.

Data Definition: The Average Manufacturer's Price per unit *per product code only* for the quarter ending September 30, 1990. If a drug is distributed in 3 package sizes, there will still be only one AMP for the product, which will be the same for all package sizes.

Specifications: Numeric values, 11 digit field: five whole numbers and 6 decimal places. Compute to 7 decimal places, and round to 6 decimal places.

Zero fill for Non-innovator Multiple Source drugs.

Data Element Name: Best Price.

NOTE: This is only required for Single Source and Innovator Multiple Source drugs, in initial submission, and for drugs approved by the FDA after 10/01/90.

Data Definition: The lowest price available from the labeler to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States (excluding depot prices and single award contract prices of any agency of the Federal Government).

Specifications: Numeric values, 11 digit field: five whole numbers and 6 decimal places. Compute to 7 decimal places, and round to 6 decimal places.

Zero fill for Non-innovator Multiple Source drugs.

Data Element Name: FDA Approval Date.

Data Definition: Date of FDA Approval of drug, if approved after 06/30/90, otherwise, zero fill this field.

Specifications: Numeric values, 8 digit field, MMDDYY

Data Element Name: Date Drug Entered Market.

Data Definition: First day of the first month that the drug was marketed for the entire month.

Example: If a drug is first sold on February 15, the first day of the first full month of marketing is March 1.

Specifications: Numeric values, 6 digit field, MMDDYY

Data Element Name: Drug Termination Date.

Data Definition: Date drug withdrawn from market or no longer distributed by labeler.

Specifications: Numeric values, 6 digit field, MMDDYY

Data Element Name: Drug Type Indicator.

Data Definition: Indicator to show whether this drug product can be acquired only by prescription or can be acquired Over-The-Counter (OTC). 1 = Rx, 2 = OTC.

Data Element Name: Correction Record Flag.

Data Definition: Indicator that this record corrects and replaces a record already submitted for the initial submission.

Specifications: Numeric one-digit field.

Valid Values:

0 = Original Record 1 = Correction Record

[FR Doc. 91-5027 Filed 3-1-91; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institute on Aging, Meeting

Pursuant to Public Law 92-463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496-9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of subcommittee: Neurological, Behavior and Sociology of Aging Review Subcommittee A.

Executive secretary: Dr. Maria Mannarino, Dr. Louise Hsu, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Date of meeting: March 5, 1991.
Place of meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue Bethesda, Maryland 20814.

Open: March 5, 7:30 p.m. to recess.
Dates of meeting: March 6-8, 1991.
Place of meeting: Building 31, Conference Room 6.

Closed: March 6-8, 8:30 a.m. to adjournment.
Name of committee: Neurological, Behavior and Sociology of Aging Review, Subcommittee B.

Executive secretary: Dr. Walter Spieth, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Date of meeting: March 5, 1991.
Place of meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: March 5, 8 p.m. to recess.
Dates of meeting: March 6-8, 1991.
Place of meeting: Building 31, Conference Room 9.

Closed: March 6-8, 8:30 a.m. to adjournment.
Name of committee: Biological and Clinical Aging, Review Subcommittee B.

Executive secretaries: Dr. James Harwood, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20891, Phone: 301/496-9666.

Dates of meeting: March 11-14, 1991.
Place of meeting: Building 31, Conference Room 8.

Open: March 11-8:30 p.m. to recess.
Closed: March 12-14-8:30 a.m. to adjournment.

Name of committee: Biological and Clinical Aging, Review Subcommittee A.

Executive secretary: Dr. Daniel Eskinazi, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892.

Dates of meeting: March 13-15, 1991.
Place of meeting: Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, Washington.
Open: March 13-7:30 p.m. to recess.

Closed: March 14-15-8:30 a.m. to adjournment.
(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Dated: February 21, 1991.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 91-5166 Filed 3-4-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3220]

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).

The 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 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 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 22, 1991.
John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Default Status Report on Multifamily Housing Projects.

Office: Housing.
Description of the Need for the Information and its Proposed Use: Mortgagees use this report to notify HUD that a project owner has defaulted and that an assignment of acquisition will result if HUD and the mortgagor do not develop a plan for reinstating the loan. The report triggers HUD negotiation with the mortgagor.

Form Number: HUD-92426.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	×	Burden hours
Recordkeeping	2,000		3		.24		1,500

Total Estimated Burden Hours: 1,500.
Status: Extension.
Contact: Kirby Weldon, HUD, (202) 708-3944, Wendy Sherwin, OMB, (202) 395-6880.

Dated: February 22, 1991.
[FR Doc. 91-4950 Filed 3-1-91; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-91-3221]
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: Wndy 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).

The 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 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 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 26, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section 106(b) Non-profit Sponsor Assistance "Seed Money" Loan Application.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD-92290 is the only form used by non-profit borrower corporations participating in HUD's section 202 program for housing the elderly and handicapped to make an application for a section 106(b) "Seed Money" loan. This form enables borrowers to receive consideration for a non-interest federal loan to \$50,000. The proceeds of the loan may be used to help defray the borrower's preconstruction costs of developing housing projects under section 202.

Form: HUD-92290.

Respondents: Non-Profit Institution.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD Form 92290.....	200		1		.5		100

Total Estimated Burden Hours: 100.
Status: Extension.

Contact: Evelyn Berry, HUD, (202) 708-2866, Wendy Shewin, OMB, (202) 395-6880.

Dated: February 26, 1991.

[FR Doc. 91-4951 Filed 3-1-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-01-4320-02]

Craig, Colorado Advisory Council; Meeting

TIME AND DATE: April 3, 1991, 10 a.m.

PLACE: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

STATUS: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

MATTERS TO BE CONSIDERED:

1. Status Report on Resolutions.
2. Status of Occidental C-b.

3. Colorado Division of Wildlife's Harvest Statistics.

4. Colorado Division of Wildlife's Deer, Elk, and Antelope Program Issues.

5. Habitat Partnership Program Update.

6. Recreation 2000 Update.

7. Election of Officers.

CONTACT PERSON FOR MORE

INFORMATION: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: February 20, 1991.

William J. Pulford,

District Manager.

[FR Doc. 91-4986 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-JB-M

[AA-620-01-4111-2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0074), Washington, DC 20503, telephone (202) 395-7340.

Title: Oil and Gas and Geothermal Resources Leasing.

OMB Approval Number: 1004-0074.

Abstract: Respondents supply information which will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas and geothermal resources lease (Form 3000-2) and enable the Bureau of Land Management to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200-9). The information supplied allows the Bureau of Land Management to determine whether a bidder is qualified to hold a lease and to conduct geothermal

resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1970.

Bureau Form Numbers: 3000-2, 3200-9.

Frequency: On Occasion.

Description of Respondents:

Individuals, oil and gas exploration and drilling companies.

Estimated Completion Time: 2 hours.

Annual Responses: 443.

Annual Burden Hours: 886.

Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653-8853.

Dated: January 10, 1991.

Hillary A. Oden,

AD, Energy and Mineral Resources.

[FR Doc. 91-4998 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Atlantic OCS Region North, Mid, and South Atlantic Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Plenary Session Atlantic OCS Regional Technical Working Groups (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Atlantic RTWG meeting will be held April 4, 1991 at the Ramada Renaissance Hotel, 13869 Park Center Road, Herndon, Virginia. The RTWG business meeting will begin at 9 a.m. and end at 4:30 p.m. Tentative agenda items are as follows:

- Outer Continental Shelf Natural Gas and Oil Resource Management Comprehensive Program 1992-1997 Draft Proposal.
- Miscellaneous roundtable discussion.

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations should contact Angie Graziano of the Atlantic OCS Region at (703) 787-1118 by March 21, 1991. Written statements should be submitted by the same date to the Atlantic OCS Region, Minerals Management Service, 381 Elden Street, Suite 1109, Herndon, Virginia 22070-4817. 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 no later than 60 days after the meeting.

Dated: February 26, 1991.

Bruce G. Weetman,

Regional Director.

[FR Doc. 91-5006 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act; Zimmer Paper Products, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 22, 1991, a proposed Consent Decree in *United States v. Zimmer Paper Products, Inc.*, Civil Action No. IP88-194C was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Decree concerns emissions of volatile organic compounds from a paper-processing plant located in Indianapolis, Indiana. The proposed Consent Decree requires the defendant to achieve and maintain compliance with or to obtain exemption from the currently applicable Indiana State Implementation Plan provisions or to cease all operations at the violating line at the plant. The Consent Decree also requires payment of a civil penalty of \$250,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Zimmer Paper Products, Inc.*, D.J. Ref. 90-5-2-1-1196.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, 5th Floor, Indianapolis, Indiana 46204; at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044.

A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, ((202) 347-2072). In requesting a copy, please

enclose a check in the amount of \$4.75 (25 cents per page for reproduction cost).

George Van Cleve,

Acting Assistant Attorney General,

Environment and Natural Resources Division.

[FR Doc. 91-5004 Filed 3-1-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-21]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: April 4, 1991, 8:15 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics, Exploration and Technology (OAET). The Committee, chaired by Dr. Joseph F. Shea, is comprised of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Committee members and other participants).

TYPE OF MEETING: Open.

Agenda

April 4, 1991

8:15 a.m.—Opening Remarks.

8:30 a.m.—Welcome.

9 a.m.—Synthesis Team Report.

10:15 a.m.—Long Range Plan, Thrust Area Reports.

12 noon—Fiscal Year 92 Status, Space Technology Interdependency Group.

- 1 p.m.—Code R Response to the Report of the Advisory Committee on the Future of the U.S. Space Program.
 2 p.m.—SSTAC/Aerospace Research and Technology Subcommittee Recommendations.
 2:30 p.m.—Ad Hoc Review Team Status Update.
 2:35 p.m.—OAET Response to Ad Hoc Studies.
 3:05 p.m.—Ad Hoc Review Team Final Reports.
 3:45 p.m.—Ad Hoc Review Team Interim Reports.
 4:15 p.m.—Summary Session.
 4:30 p.m.—Adjourn.

Dated: February 28, 1991.

Philip D. Waller,

Deputy Director, Management Operations Office.

[FR Doc. 91-4982 Filed 3-1-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Application for License To Export a Utilization Facility

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 a utilization facility as defined in 10 CFR part 110 and 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 No.:	Description	Value	End use	Country of destination
General Atomics—02/12/91, 02/15/91, XR156.....	Four (4) complete control rods.	\$30,000.00	For use in TRIGA Research Reactor.	United Kingdom.

Dated this 22nd 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. 91-5008 Filed 3-1-91; 8:45 am]

BILLING CODE 7590-01-M

Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant, Unit 1); Exemption

[Docket No. 50-317]

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operating License No. DPR-53, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit 1 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland.

II

10 CFR part 50, appendix, J, paragraph III.D.3, requires that licensees perform type C tests during each reactor

shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are local leak rate tests (LLRTs) of containment isolation valves.

By letter dated January 18, 1991, the licensee requested a one-time schedule exemption from 10 CFR part 50, appendix J, paragraph III.D.3. Specifically the licensee requested a schedule exemption to extend the Type C test (LLRT) on containment isolation valve 1-CVC-515 from March 23, 1991, to June 21, 1991, which is about a three month delay extension beyond the 24-month limit specified in the regulation.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(iii) of 10 CFR part 50 indicates that special circumstance exist when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or significantly in excess of those incurred by others similarly situated. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the

licensee has made good faith efforts to comply with the regulation.

IV

The proposed exemption will not change plant equipment, operation or procedures, and does not adversely affect either the probability or the consequences of any accident at this facility. The licensee performed maintenance on containment isolation valve 1-CVC-515 in March of 1989 which resulted in the required LLRT being performed on the valve three months earlier than the other Unit 1 containment isolation valves requiring the LLRTs in accordance with the schedule of the above cited regulation. This was initially considered acceptable based on the projected schedule for the Unit 1 spring 1991 outage and projected startup of Unit 2. However, due to area electrical power needs, the Pennsylvania-New Jersey-Maryland (PJM) Network requested that the licensee not shut down the Unit until late in March. In addition, subsequent delays in the startup of Unit 2 would result in conflicts for the licensee's plant staff to provide optimal support for the initial startup process for Unit 2 and shutdown of Unit 1. The requested extension will provide the licensee flexibility to perform its Unit 1 outage tasks while allowing for improved coordination of plant staff to support

both units in a safe and efficient manner.

The proposed exemption constitutes a three-month delay in performing the Type C test (LLRT) on containment isolation valve 1-CVC-515. As noted, the extension will accommodate the current schedule for both units, allow the licensee flexibility to perform required tasks, and also allow for improved coordination of the plant staff to support activities of both units in a safe and efficient manner.

Strict compliance with the schedule required by the regulation would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adapted. The requirement to LLRT the containment isolation valves during reactor shutdown, but in no case at intervals greater than two years, presumed that the time interval was adequate to perform the required tests on all the valves during a scheduled refueling outage. As noted, the valve 1-CVC-515 LLRT was performed three months early due to required maintenance and strict compliance with the schedule requirements of the regulation would result in early plant shutdown and impact the current area energy needs. Specifically, unplanned preparation and startup of other generation capacity for the PJM Network, would be necessary. Thus, there are special circumstances present which satisfy 10 CFR 50.12(a)(2)(iii).

The licensee has made a good effort to comply with the regulations. The required LLRTs have been performed in accordance with the schedule specified in the regulations during previous planned outages. The initial planning and scheduling allowed for the 1-CVC-515 valve to be tested in the upcoming outage and returned to the same sequence as the other valves. However, the unanticipated supply requirements and schedule changes for both units have necessitated the one-time extension request. Thus, there are special circumstances present which satisfy 10 CFR 50.12(a)(2)(v).

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) an exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants a one-time exemption, as

described in section III above from 10 CFR part 50, appendix J, paragraph III.D.3, regarding the schedule for performance of LLRT on containment isolation valve 1-CVC-515 for Calvert Cliffs, Unit 1. This one-time schedule exemption extends the required test date from March 23, 1991 to June 21, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption extension would have no significant effect on the quality of the human environment (56 FR 7420).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of February 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II
Office of Nuclear Reactor Regulation.

[FR Doc. 91-5009 Filed 3-1-91; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp., et al., (Three Mile Island Nuclear Station Unit No. 1); Exemption

I

GPU Nuclear Corporation (GPUN/ licensee) and three co-owners hold Facility Operating License No. DPR-50, which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI-1) (the facility) at power levels not in excess of 2568 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Dauphin County, Pennsylvania.

II

The licensee requested an exemption from the Commission's regulations in its letter dated August 30, 1990. The requested exemption is from a requirement in appendix J to 10 CFR part 50 which requires that certain surveillance tests be conducted during the same refueling outage as Inservice Inspections (ISI) required by 10 CFR 50.55a.

The specific requirement is contained in section III.D.1(a) of appendix J, 10 CFR part 50, and states that "after the preoperational leakage rate test (of containment), a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year

service period. The third test of each set shall be conducted when the plant is shut down for the 10-year plant inservice inspections." The Type A tests are defined in section II.F of appendix J as "tests intended to measure the primary reactor containment overall integrated leakage rate * * * at periodic intervals * * *." The 10-year inservice inspection is that series of inspections performed every 10 years in accordance with section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The time and plant conditions required to perform the Type A integrated leakage rate tests (ILRTs) necessitates that they be performed during refueling outages. The time interval between ILRTs should be about 40 months (3 1/3 years) based on performing three such tests during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months is typically authorized in the Technical Specifications (TSs) issued with an operating license to permit flexibility in scheduling the ILRTs. However, TMI-1 has no such limitation in the TSs.

TMI-1 has had a somewhat unique history in terms of ILRTs, partly as the result of the long shutdown period following the accident at TMI-2. For example, the ISI schedule was interrupted from early 1979 to late 1985 (78 months) during this mandated shutdown period. The first 10-year ISI interval will therefore end in April 1991. Following the preoperational ILRT in 1974, periodic ILRTs were conducted in 1977 (which failed to meet the acceptance criteria), 1978, 1981, 1984, 1986 and 1990. The past five tests met the leakage criteria. Therefore, TMI-1 has met the intent and requirements of appendix J.

Due to the time and plant conditions required to conduct it, the 10-year ISI required by 10 CFR 50.55a also must be conducted during a refueling outage. This ISI will be performed during the eighth refueling outage starting in October 1991. If the requested exemption is not granted, section III.D.1(a) of appendix J would require an additional ILRT to be performed in October 1991, about 22 months after the previous ILRT. This interval would be considerably shorter than the interval of about 40 months implied in Appendix J. More importantly, this interval would not be consistent with either the intent or the underlying purpose of the rule which requires that these Type A tests * * * be performed at approximately equal intervals during each 10-year

service period." (Section III.D.1(a) of appendix J).

The licensee addressed this issue in its exemption request in which it cites from appendix J that "the purpose of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications * * *." The licensee asserts and the NRC staff agrees that the Type A test conducted in January 1990 met the underlying purpose of the rule in that the required overall leak-tightness of the primary containment was demonstrated. Accordingly, it is not necessary to conduct another Type A test in the forthcoming refueling outage to meet the intent of the rule. Doing another ILRT in the forthcoming refueling outage would not add significantly to the assurance that the overall leakage rate of the primary containment and its penetrations remain within the value specified in the TMI-1 TSs and would not meet the intent of the rule to conduct these tests at approximately equal (40 month) intervals as cited above.

On this basis, we find that the licensee has demonstrated that the "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." (10 CFR 50.12(a)(2)(ii)).

Each of these two tests (i.e., the Type A test and the 10-year ISI) is independent of each other and provides assurances of different plant characteristics. The Type A tests assure the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI provides assurance of the structural integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. Accordingly, there is no safety-related concern associated with their coupling in the same refueling outage.

On this basis, the NRC staff finds the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A test from the 10-year ISI will not present an undue risk to the public health and safety.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption with respect

to one of the requirements of 10 CFR part 50, appendix J, section III.D.1(a):

The TMI-1 Technical Specifications may be revised to delete the requirement that the third ILRT be performed in conjunction with the 10-year inservice inspection. This Exemption does not alter the existing requirement that three ILRTs be performed during each 10-year service period.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (56 FR 2778).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 25th day of February, 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 91-5010 Filed 3-1-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Advance Notice of Plans for Revision of OMB Circular No. A-130, Management of Federal Information Resources

SUMMARY: The Office of Management and Budget (OMB) announces plans to revise OMB Circular No. A-130, Management of Federal Information Resources.

DATES: Persons who wish to comment on OMB's plans for Circular No. A-130 should submit their comments no later than May 3, 1991.

ADDRESSES: Comments should be addressed to: Information Policy Branch, Office of Information and Regulatory Affairs, room 3235, New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has statutory responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, as amended), with respect to Federal executive agencies, to develop and implement uniform and consistent information resources management policies; to oversee the development of information management principles, standards, and guidelines and to promote their use; and to promote the application of information technology to improve the effectiveness of the use and dissemination of information.

To fulfill these responsibilities, on December 12, 1985, OMB issued OMB Circular No. A-130, Management of Federal Information Resources (50 FR 52730-52751), which provided a general policy framework for the management of Federal information resources. OMB addressed the need for additional guidance on electronic information collection issues with the publication, on August 7, 1987, of a Notice of Policy Guidance on Electronic Collection of Information (52 FR 29454-29457). On January 4, 1989, OMB published a notice entitled Advance Notice of Further Policy Development on Dissemination of Information (54 FR 214-220) which proposed further development of the information dissemination policy found in Circular No. A-130. On June 15, 1989, OMB published a notice entitled Second Advance Notice of Further Policy Development on Dissemination of Information (54 FR 25554-25559); which, among other things, withdrew the January 1989 notice and announced plans to revise the basic information dissemination policy of Circular No. A-130.

The notice of August 1987 and the two notices in 1989 particularly addressed the management of electronic information, reflecting the fact that agency information holdings are increasingly in electronic format and that agencies are increasingly applying information technology to the management of their information resources. Since 1985, Federal agencies have introduced major new information programs, especially those involving the collection and dissemination of electronic information. Since 1985, Congress has enacted several laws bearing on the Circular, such as amendments to the Paperwork Reduction Act, the Computer Security Act of 1987 (Pub. L. 100-235), and the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503).

Also, since 1985, Congress has held hearings concerning the reauthorization of the Paperwork Reduction Act and has published two reports directly germane to the revision of OMB Circular No. A-130. The reports are:

Federal Information Resources Management Act, Report of the Committee on Governmental Affairs, U.S. Senate, Report No. 101-487, Washington, DC, October 2, 1990
Paperwork Reduction and Federal Information Resources Management Act of 1990, Report of the Committee on Government Operations, U.S. House of Representatives, Report No. 101-927, Washington, DC, October 23, 1990

In response to interest and actions on the part of Congress, the agencies, and the public, OMB has determined that Circular No. A-130 requires a thorough revision. The present notice describes OMB's plans for revising the Circular. While the entire Circular is open for review, OMB plans especially to address the issues enumerated below.

As to timing, OMB intends to proceed first with revision of information dissemination policy. Other topics will be developed concurrently, some requiring more time for completion, some less. OMB will publish all proposed revisions for public comment and anticipates issuing a series of notices during 1991 and 1992 as work on various topics is completed.

OMB intends that the revision of Circular No. A-130 should be an open process, and states its willingness to meet with interested persons who wish to comment on the revision. OMB invites comments both as to whether these are the issues most requiring revising and new formulation of policy, and as to the directions that formulation should take.

1. Information Dissemination Policy. OMB will give first priority to revising the Circular's treatment of information dissemination policy. OMB's approach will focus on the following points:

a. General Responsibilities. OMB will revise policy on the general responsibilities of all executive agencies to disseminate government information, elaborating on the nature and extent of the responsibilities.

b. Management of Information Dissemination, Especially for Electronic Information. OMB plans to develop guidance concerning the characteristics of sound information dissemination management, including the necessity for planning and for disseminating products and services that are of maximum usefulness to the public. The treatment will emphasize the special characteristics of electronic information dissemination.

c. Adequate Notice. "Adequate notice" refers to the requirement that agencies must give public notice before creating, terminating, or making significant changes to major information products. OMB treated the matter in the Federal Register notices of January 4 and June 15, 1989.

d. Avoiding Monopolistic Practices. OMB plans to supplement the Circular's treatment of practices to avoid a situation in which the government is sole supplier of information products and services.

e. User Charges. The Federal Register notices of January 4 and June 15, 1989, treated the subject of user charges for

government information products and services. The notices proposed that user charges for these products and services should be set no higher than the cost of dissemination. OMB plans to revise the Circular consistent with these notices.

f. The Relationship between Federal and Nonfederal Dissemination of Government Information. OMB intends to refocus discussion concerning Federal and nonfederal roles and responsibilities with respect to government information dissemination, concentrating on the information user's perspective and the desirability of cooperation between Federal and nonfederal entities.

g. Depository Libraries. OMB will revise guidance regarding the depository libraries and encourage agencies to provide electronic information products to the depository libraries.

2. Development of Additional Topics. OMB recognizes that Circular No. A-130 requires fuller treatment of certain aspects of Federal information resources management, and plans to develop guidance especially on the following topics.

a. Role of the States. The States recommended through the National Governors' Association (NGA) that Circular No. A-130 be broadly rewritten to treat more adequately the role of the States in Federal information resources management. OMB agreed with the recommendation. In its notice of June 15, 1989, OMB stated its intent to work with State organizations to ensure that the role of the States is appropriately articulated. OMB has met several times with officials from NGA, the Council of State Governments, the National Conference of State Legislatures, and other State organizations to advance action on this issue.

b. Records Management. Circular No. A-130 requires greater attention to records management and disposition as integral components in the information life cycle. These functions have become increasingly important, particularly as agencies design more major information systems for electronic collection and dissemination of information. OMB has formed an informal Interagency Working Group on Records Management to prepare draft materials on this subject for inclusion in a revised Circular.

c. Electronic Collection of Information. The notice of August 7, 1987, proposed guidance concerning the electronic collection of information. The great majority of comments on the notice expressed support for the policy guidance; no one voiced general opposition. OMB plans to incorporate the guidance with minor changes.

d. Electronic Data Interchange (EDI). EDI, the electronic transfer of commercial and regulatory information between parties, is a key part of the Federal government's strategy to reduce paperwork burden and improve financial management practices. OMB plans to provide guidance to agencies on the establishment and conduct of EDI projects.

e. Strategic Information Resources Planning and Cost/Benefit Analysis. Circular No. A-130 requires a detailed framework for strategic information resources management planning. OMB intends to address planning topics such as linking information technology investments to overall agency mission, preparing requirements analyses, creating policy level control and review mechanisms, establishing evaluation schemes for proposed investments, and conducting cost/benefit analyses. If warranted, this framework may be discussed in some detail in an appendix to the Circular.

3. Appendices to the Circular.—a. Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals. OMB will revise appendix I to incorporate procedures relating to reporting matching programs pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and will include the guidance found in OMB Bulletin 89-22, Reporting Instructions under the Computer Matching Act.

b. Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities. OMB will revise appendix II to reflect changes in law made by the Chief Financial Officers Act and the Budget Enforcement Act of 1990.

c. Appendix III: Security of Federal Automated Information Systems. OMB will revise Appendix III to incorporate matters arising from the Computer Security Act of 1987.

d. Appendix IV: Analysis of Key Sections. Because appendix IV presents analysis of policy statements, revisions and additions to policy statements will cause changes in the Appendix. See also below, Revision of Format.

4. Other Matters.—a. Revision of Format. Many persons have commented on the usefulness of appendix IV: Analysis of Key Sections in understanding Circular No. A-130. OMB plans to review the Circular's format for readability and to determine whether the materials in appendix IV properly belong in the Policy section of the Circular.

b. *Technical Corrections.* At several places Circular A-130 requires correction for technical inaccuracies.

James B. MacRae, Jr.,

Acting Administrator and Deputy
Administrator for Information and Regulatory
Affairs.

[FR Doc. 91-4979 Filed 3-1-91; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28909; File No. SR-CBOE-91-03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Transaction Fees for Equity Securities Products

Pursuant to section 19(b)(1)d of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. 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 has established transaction fees for customer, market-maker and member firm proprietary trading of stocks, bonds, rights, warrants and equity hybrid products (collectively, "equity securities products") as follows:¹

Additions italicized; deletions bracketed.

Per share (bond) transaction fee		[Per share (bond) value fee]
Customer.....	[\$.003] <i>\$.0025</i>	[\$.0001]
Member Firm.....	\$.001	[none]
Market-maker.....	\$.0005	[none]

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

¹ The fee will be equal to the number of shares times the Per Share (Bond) Transaction Fee.

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-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The CBOE is amending the transaction fees applicable to customer, market-maker and member firm proprietary accounts in equity securities products as set forth above.² In general, the CBOE is deleting the Per Share (Bond) Value Fee and is decreasing the Per Share (Bond) Transaction Fee for customer accounts. The Exchange has not amended the fees for member firm and market-maker proprietary transactions. The fees shall apply to all transactions effected after trading in each product begins.

Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or

² The transaction fees to be imposed on the trading of equity securities products were established in File Nos. SR-CBOE-90-34 and 91-02 which were submitted to the Commission on December 20, 1990 and January 17, 1991, respectively. See Securities Exchange Act Rel. No. 28725 (December 28, 1990), 56 FR 539 (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-90-34) and Securities Exchange Act Rel. No. 28859 (February 5, 1991), 56 FR 5716 (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-91-02).

other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-91-03 and should be submitted by March 25, 1991.

For the Commission, by the Division of
Market Regulation, pursuant to delegated
authority.

Dated: February 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4968 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28916; File No. SR-MSE-91-7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to its Member Transaction Fee Schedule

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 7, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("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 Term of Substance of the Proposed Rule Change

The MSE proposes to amend Section (c), subparagraphs (1) and (2), of the Transaction Fee Schedule of its Membership Dues and Fees by waiving all Item Charges and Value Charges for all transactions in Tape B eligible issues.¹ This fee waiver will apply only to firms sending orders in Tape B eligible securities to the floor of the MSE and will be limited in time to the period beginning with the effectiveness of this submission through December 31, 1991.² The MSE previously waived these fees for the time period August 31 through December 31, 1990.³

Note: The Current MSE Fees under this section are set forth below:

Shares/trade	Rate
(1) Item Charge:	
1-99.....	\$.25 (per trade).
100-500.....	.25 (per 100 shares).
501-and over.....	1.25 (per trade).

Total gross dollar value/Month (in millions)	Rate (per \$1,000)
(2) Value charge:	
0.0-10.0.....	\$16.0
10.1-25.0.....	12.0
25.1-125.0.....	8.5
125.1-250.0.....	8.0
250.1-350.0.....	7.5
350.1-450.0.....	6.5
450.1-550.0.....	4.5

¹ The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), complies current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American ("Amex"), Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the National Association of Securities Dealers, Inc. Amex listed Stocks and qualifying regional listed stocks are reported on CTA Tape B. Securities Exchange Act Rel. No. 21563 (December 18, 1984), 50 FR 730 (January 7, 1985).

² The MSE originally requested that the Item and Value charges for transactions in Tape B eligible issues be waived on a permanent basis. The MSE subsequently requested that the proposed waiver of transaction fees remain in effect only through the end of 1991. See letter from Daniel J. Liberti, Associate Counsel, MSE to Elizabeth A. Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, dated February 15, 1991.

³ See Securities Exchange Act Rel. No. 28402 (August 31, 1990), 55 FR 37389 (September 11, 1990) (approval of File No. SR-MSE-90-14). The Commission did not receive any comments in connection with this filing.

Total gross dollar value/Month (in millions)	Rate (per \$1,000)
550.1-1,000.00.....	2.5
Over 1,000.....	1.5

In calculating the value charge (1) The valuation of the first 500 shares per trade will not be included, (2) only the first 500,000 shares will be valued on cross orders, and (3) only the first 50,000 shares will be valued on non-cross trades.

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-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities to enhance the Exchange's competitive position in these issues.

The proposed rule change is consistent with section 6(b)(4) of the Act in that the waiver of these fees does not affect the existing equitable allocation of dues, fees, and other charges among Exchange members using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary of appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge

imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 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 persons, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-91-7 and should be submitted by March 25, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 25, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-4969 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28914; File Nos. SR-PSE-91-07 and SR-AMEX-91-02]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Pacific Stock Exchange, Inc. and American Stock Exchange, Inc. Relating to the Listing of Long-Term Equity Options

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 11, 1991 and February 22, 1991, the Pacific Stock Exchange, Inc. ("PSE") and American

Stock Exchange, Inc. ("AMEX") (collectively "Exchanges"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to modify their respective rules, PSE rule 6.4(d) and AMEX rule 903, Commentary .03, to provide for the listing of long-term options that expire up to 39 months from the date of issuance for all products other than index options. Currently, the Exchanges may list long-term options having up to 24 months to expiration. The Exchanges also propose to allow long-term options to be listed with up to six different expiration months.

The text of the proposed rule changes are available at the Office of the Secretary, AMEX and PSE, and the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Exchanges currently trade long-term equity options that expire 24 months from the date of issuance. The Exchanges state that these options have generated significant investor interest and consequent trading activity. Accordingly, the Exchanges believe that the listing of long-term options that expire up to 39 months from the date of issuance would fit the requests and needs of retail investors. The two additional expiration months will allow the Exchanges to list options with two expirations between 25 and 39 months,

in addition to the four potential expirations between 12 and 24 months.

The PSE proposes that new expiration months for all far-term equity options will be listed at one time, twice yearly, with the expiration month to be determined by the expiration cycle of the underlying security. The PSE also intends to open the far-term options on a day other than the Monday following the Friday on which the near-term month expires, and further intends to open all far-term equity options on one day, with the date to be chosen by the exchange. The AMEX, however, even though under its proposal would have the authority to list two expiration months between 25 and 39 months, intends to list initially only one additional expiration month for each long-term equity options at one time during a given year.

The Exchanges believe that the proposed rule changes are consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchanges be designed to promote just and equitable principles of trade, and to protect public investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes impose a burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Written comments on the proposed rule changes were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.¹

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).² In

¹ The AMEX requested expedited review and accelerated effectiveness in its original filing with the Commission. The PSE subsequent to its original proposal requested accelerated effectiveness on February 22, 1991, pursuant to a phone conversation between Jeffrey P. Burns, Staff Attorney, Options Regulation, Division of Market Regulation, and David Semak, Vice-President Regulation, PSE.

² 15 U.S.C. 78f(b)(5) (1988).

particular, the Commission believes that the proposed rule changes are designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and their underlying stocks and contributing to the protection of investors and the maintenance of fair and orderly markets. Specifically, by allowing investors to lock in their hedges for up to 39 months, the PSE and AMEX proposals for long-term equity options will permit investors to protect better their portfolios from adverse long-term market moves. The PSE and AMEX currently list long-term options with expirations of up to two years. These options have met with some initial enthusiasm from market investors. By extending these options out to 39 months, the Exchanges are providing an additional product for investors who desire a long-term hedge. Further, long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide institutions with an alternative to hedging portfolios with off-exchange customized options or warrants.

The Commission notes that strike price interval, bid/ask differential, and continuity rules will not apply to such long term options series until the time to expiration is less than nine months. This approach is consistent with the approach currently being taken by the Exchanges with regard to their long-term equity and index options.³ This approach is being taken initially because of the lack of historical pricing data for long-term equity options. Strike price interval requirements and bid/ask differential rules applicable to equity options currently are based on options that expire nine months from the time they begin trading. Therefore, there currently is no basis for establishing accurate prices for long-term equity options that will expire 39 months from the time they begin trading.

The commission, however, notes that although specific bid/ask differential and continuity rules do not apply to long-term equity options over nine months to expiration, the Exchange general rules that obligate market makers to maintain a fair and orderly market will continue to apply.⁴ The

³ See Securities Exchange Act Rel. Nos. 25041 (October 16, 1987), 52 FR 40008 (order approving trading of long-term index options on the AMEX); 28514 (October 3, 1990), 55 FR 41400 (order approving trading of long-term equity options on the AMEX); 28589 (October 31, 1990), 55 FR 46882 (order approving trading of long-term index and equity options on the PSE).

⁴ See AMEX rule 170 and PSE rule 5.35(f).

Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchanges with the authority to make a finding of inadequate market maker performance should these market makers enter into transactions or make bids or offers (or fail to do so) in long-term equity options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to the long-term equity options when the time remaining until expiration is less than nine months.

The Commission also finds that the PSE and AMEX proposal to increase the number of expiration months from four to six is reasonable since it will permit the Exchanges to list options with two expirations between 25 and 39 months, in addition to the four potential expirations between 12 and 24 months. The Commission does not believe that increasing the number of expiration months to six will cause, by itself, a proliferation of expiration months since the Exchanges have stated that they will not list more than two expirations between 25 and 39 months.

Nevertheless, the Commission requests that the Exchanges monitor the volume of additional options series listed as a result of this rule change and the effect on each Exchange's system capacity and quotation dissemination displays.

Finally, the Commission believes that the Exchanges proposals to list all three-year long-term equity options at one time is a reasonable exercise of their business judgment. The Commission also does not believe that listing all long-term options on a date other than the Monday following the Friday on which the near-term month expires raises any significant regulatory issues.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The PSE and AMEX proposed rule changes are identical to a proposal by the Chicago Board Options Exchange, Inc. ("CBOE") to list long-term equity options that were approved on February 15, 1991.⁵ Therefore, the Commission believes it is appropriate to approve the proposed rule changes on an accelerated basis so that the Exchanges can begin trading long-term equity options, which will facilitate

competition between exchanges for product services to the benefit of public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule changes is appropriate and consistent with section 6 of the Act.

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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the respective principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by March 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule changes (SR-PSE-91-07 and SR-AMEX-91-02) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Dated: February 25, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-5022 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28912; File No. DTC-90-13]

Self-Regulatory Organizations; The Depository Trust Co.; Order Granting Temporary Extension of a Proposed Rule Change Concerning the Rush Withdrawal Transfer Service

February 25, 1991.

On December 31, 1990, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), The Depository Trust Company ("DTC") filed with the Securities and Exchange

Commission ("Commission") a proposed rule change (File No. SR-DTC-90-13) to authorize DTC to continue, on a pilot basis, a Rush Withdrawal Transfer ("RWT") service for corporate issues settling in next-day funds that are not full Fast Automated Securities Transfer ("FAST") issues.¹ DTC is requesting the extension of the pilot program to allow DTC additional time to obtain and submit operational data concerning the proposal and to allow the Commission sufficient time to review that data.

Notice of the proposal was published in the Federal Register on January 18, 1991, to solicit comment from interested persons.² No comments were received. This Order extends the pilot program on a temporary basis until August 30, 1991.

The proposed rule change will allow DTC to replace its urgent Certificate on Demand ("COD")³ withdrawal service for corporate securities issues settling in next-day funds that are ineligible for DTC's FAST program with RWT. Under RWT, DTC will endeavor to make available to participants that request the RWT service for RWT eligible issues, certificates registered in the participant's name (or other name as the participant directs), on a next-day basis. Currently, DTC fills urgent COD withdrawal requests by delivering certificates, on a next-day basis, registered in DTC's nominee name (Cede & Co.) endorsed to the participant.

DTC has operated RWT on a pilot basis for approximately 18 months. A temporary extension of the proposal will allow DTC to gain further operational experience on an ongoing basis and allow DTC time to submit data regarding the operation of the pilot program prior to filing for permanent approval of the proposal. During the temporary extension period, the Commission will continue its review of the proposal and expects DTC to file for permanent approval of the proposal by May 30, 1990.

As discussed in detail in the initial order granting temporary approval, the Commission preliminarily finds that the

¹ DTC's pilot program was initially approved on a temporary basis until December 30, 1989. See Securities Exchange Act Release No. 27052 (July 21, 1989), 54 FR 31600. Subsequently, the Commission extended the pilot program until March 31, 1990, and again until December 31, 1990. See Securities Exchange Act Release Nos. 27518 (December 7, 1989), 54 FR 52061; and 27862 (March 29, 1990), 55 FR 12761.

² Securities Exchange Act Release No. 28768 (January 11, 1991), 56 FR 2059.

³ An urgent COD withdrawal is a request for immediate delivery of physical certificates. DTC fulfills such requests by removing certificates registered in DTC's nominee name from its vault and endorsing them over to the requesting participant.

⁵ Securities Exchange Act Rel. No. 28890 (February 15, 1991) [order approving file no. SR-CBOE-90-32, permitting the trading of three-year LEAPS].

⁶ 15 U.S.C. 78s(b)(2) (1988).

⁷ 17 CFR 200.30-3(a)(12) (1990).

proposed rule change is consistent with the requirements of section 17A of the Act as it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions by allowing transfer agents to process ownership transfer on an expedited basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-90-13) be, and is hereby, extended for a temporary period until August 30, 1991.

For the Commission, by the Division of Market Regulatory, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5021 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28908; File No. SR-Amex-90-35]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Increased Annual Fee for Listed Company Equity Issues

On December 19, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to increase the annual fee imposed on Amex listed company equity issues.

The proposed rule change was noticed in Securities Exchange Act Release No. 28740 (January 3, 1991), 56 FR 1039 (January 10, 1991). No comments were received on the proposal.

The Amex proposes to increase the annual fee imposed on listed company equity issues. This annual fee, which is based on the number of outstanding shares of stock, is set forth in 17 separate categories in increments of one million shares. At the present time, the fee ranges from \$4,500 for one million shares or less of shares outstanding to \$12,500 for shares of stock outstanding in excess of 16 million. The Exchange proposes to increase the fee charged by \$1,000 for all 17 categories of shares outstanding. The proposal, therefore, would increase the current minimum fee of \$4,500 to \$5,500 and increase the maximum fee from \$12,500 to \$13,500.

The Exchange states that the purpose of the proposed rule change is to increase the annual fee in order to keep

the Exchange competitive with other equity exchanges offering similar services. The Exchange also states that its most recent proposal to increase the annual fee imposed on listed company equity issues was filed with the Commission in 1988.³

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.⁴ More specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. The Commission notes that an increase in Amex's annual listing fee was last approved in 1989,⁵ and that this increase is modest on an absolute basis. Moreover, the current increases do not place an excessive allocation of Amex fees on its issuers as opposed to members and other persons using its facilities. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Dated: February 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4971 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28910; File No. SR-PHLX-90-38]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Long-Term Equity and Stock Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby

¹ See Securities Exchange Act Rel. No. 26520 (February 3, 1989), 54 FR 6463 (February 10, 1989) by which the Commission approved a proposed rule change to increase both the annual listing fee and the supplemental listing fee imposed on Amex listed company equity issues (File No. SR-Amex-88-32).

² 15 U.S.C. 78f (1988).

³ See Securities Exchange Act Rel. No. 28520, *supra* note 3.

⁴ 15 U.S.C. 78s(b)(2) (1988).

⁵ 17 CFR 200.30-3(a)(12) (1990).

given that on December 26, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" 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 PHLX proposes to amend Exchange rule 1012, Commentary .03, and Exchange rule 1101A to provide for the listing of long-term equity and stock index options.¹

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-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list extended long-term equity and stock index options. Specifically, the proposed rule change will permit the Exchange to trade extended far-term option series, defined in the proposal as equity option series that expire twelve to twenty-four months from the time that they are opened for trading, or stock index options series that expire twelve to thirty-six months from the time that they are opened for trading. When the stock index options have less than twelve months to expiration, and when the equity options have less than nine

¹ On February 11, 1991, the PHLX amended its proposal to provide that strike price interval, bid/ask differential and continuity rules shall not apply to long-term stock index option series until the time to expiration is less than twelve months. See letter from Murray L. Ross, Esq., Secretary, PHLX, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated February 11, 1991 ("PHLX amendment letter").

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1990).

months to expiration, the series' will lose their extended far-term characterization and will be traded like any other non-extended far-term option contract. The extended far-term option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. Quotations for the extended far-term options series need not be posted until they are opened for trading.²

Initially, the PHLX plans to list strike price series for the extended far-term options which are at-the-money and twenty per cent in- and out- of the money.³ The Exchange will introduce new equity options series only when there is a corresponding market move of twenty per cent. For stock index options, however, the Exchange plans to add strike price intervals following a market move of ten to fifteen percent, a policy consistent with the practices of other self-regulatory organizations.

The purpose of the proposed rule change is to provide an additional product for trading on the Exchange that will protect investors by affording them an additional means to hedge their equity portfolios against long-term market risk. Although other hedging products exist, such as financial futures and off-exchange customized derivative products, the Exchange believes that investor interest is served by providing market participants with an additional hedging instrument.

The Exchange believes that rules regarding strike price intervals, bid/ask differentials and continuity should not apply to extended far-term option series until the time to expiration is less than twelve months for stock index options,⁴ or less than nine months for equity options because, at this time, no basis has been determined for establishing reasonable prices for stock index options that expire twelve or more months from the time they commence trading or equity options that expire nine months or more from the time they commence trading. The PHLX believes that proper bid/ask differentials and market continuity will be established due to specialists' and registered options traders' ("ROTs") general obligations to

maintain a fair and orderly market. In addition, the Exchange intends to monitor regular trading in extended far-term options series to ascertain that markets are maintained appropriately.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange since the proposal will add liquidity to the market by allowing market participants to hedge the risks of their stock and index portfolios over a longer time period with a known and limited cost. In addition, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because it is based entirely on the existing rules of other options exchanges.⁵

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).⁶

² See Securities Exchange Act Rel. Nos. 25041 (October 16, 1987), 52 FR 4008 (October 26, 1987) (order approving SR-Amex-87-22, providing for the trading of long-term index options on the American Stock Exchange ("Amex")), 24853 (August 27, 1987), 52 FR 33488 (September 3, 1987) (order approving SR-CBOE-87-24, providing for the trading of long-term index and equity options of the Chicago Board Options Exchange ("CBOE")), 28514 (October 3, 1990), 55 FR 41400 (October 11, 1990) (order approving SR-Amex-90-18, providing for the trading of long-term equity options on the Amex), and 28589 (October 31, 1990), 55 FR 46882 (order approving SR-PSE-90-35, providing for the listing of long-term index and equity options on the Pacific Stock Exchange ("PSE")) (collectively termed "Long-Term Options Approval Orders").

³ 15 U.S.C. 78f(b)(5) (1982).

Specifically, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Currently, investors use options to, among other things, hedge the risks associated with holding diversified equity portfolios. The Commission believes that by allowing investors to lock in their hedges for up to two years (three years with stock index options), the Exchange's proposal for long-term options will permit institutions to better protect their portfolios from adverse market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide institutions with an alternative to hedging portfolios with off-exchange customized derivative instruments, or short-term, non-extended exchange-traded equity or stock index options. Accordingly, the Commission believes that the proposed rule change will better serve the long-term hedging needs of institutional investors.

The Commission notes that strike price interval, bid/ask differential, and continuity rules will not apply to such long-term option series until the time to expiration is less than twelve months for stock index options and less than nine months for equity options. This approach is consistent with the approach taken by the Amex, CBOE, and PSE⁷ because of the lack of historical pricing data for long-term options. Strike price interval requirements and bid/ask differential rules applicable to index and equity options currently are based on options that expire nine to twelve months from the time they begin trading. Therefore, there currently is no basis for establishing reasonable prices for long-term index and equity options that will expire more than twelve and nine months, respectively, from the time they begin trading.

However, the PHLX has stated that it will monitor closely the trading in long-term index and equity options to gain experience with regard to these options, and that in one year's time it will reexamine the applicability of these rules to long-term options.⁸

⁷ See Long-Term Options Approval Orders, *supra* note 5.

⁸ See PHLX letter, *supra* note 3.

² Pursuant to Exchange rule 1000A(a), which makes all Exchange Stock Option Rules, Exchange By-Laws and Policies of the PHLX's Board of Governors applicable to stock index options traded on the PHLX, all of the provisions relating to extended far-term stock options under Exchange rule 1012 also apply to extended far-term stock index options.

³ See letter from Murray L. Ross, Esq., Secretary, PHLX, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated January 31, 1991 ("PHLX letter").

⁴ See PHLX amendment letter, *supra* note 1.

The Commission notes that although specific bid/ask differential and price continuity rules will not apply to long-term index options that have over twelve months to expiration, or to long-term equity options that have over nine months to expiration, the PHLX's general rules that obligate PHLX specialists and ROTs to maintain fair and orderly markets will continue to apply.⁹ The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate specialist or ROT performance should these specialists or ROTs enter into transactions or make bids or offers (or fail to do so) in long-term options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to long-term stock index options when the time remaining until expiration is less than twelve months and to long-term equity options when the time remaining until expiration is less than nine months.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register* because the PHLX's proposed rule change is identical to proposals by the Amex, CBOE, and PSE to trade long-term equity and index options, which the Commission has already approved.¹⁰ These proposals were subject to a notice and comment period and the Commission did not receive any comments on them. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can begin trading long-term stock index and equity options. Moreover, since the Amex, CBOE, and PSE have begun trading long-term options, permitting the PHLX to begin trading long-term options will facilitate competition among the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

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 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PHLX-90-38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Dated: February 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4972 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

February 25, 1991.

On February 11, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-6531	ASTA	AST Research, Inc., \$.01 par value.
7-6532	DELL	DELL Computer, Corp., \$.01 par value.
7-6533	MCCS	MEDCO Containment Services, Inc., \$.01 par value.

The above-referenced issues are being applied for as an expansion of the

exchange's program in which OTC securities are being traded pursuant to a grant of UTP.

Comments

Interested persons are invited to submit, on or before March 18, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4967 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28918; International Series Rel. No. 235; File No. SR-NASD-91-8]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to the Quotation Linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.

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 National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁹ See *e.g.*, Exchange rules 1014 and 1020.

¹⁰ See Long-Term Options Approval Orders, *supra* note 5.

¹¹ 15 U.S.C. 78s(b)(2) (1982).

¹² 17 CFR 200.30-3(a)(12) (1990).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE") for a pilot term of two years.¹ This experimental linkage permits an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half of its "pilot group" of linkage securities. NASD and ISE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the NASDAQ and ISE dealer systems ("common issues") may access linkage information without paying a separate charge to receive it. Operation of the linkage in accord with the terms of the October 1987 Order was extended through February 28, 1991, with the Commission's approval of File No. SR-NASD-90-65.²

Pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, the NASD submits this proposed rule change to obtain Commission approval for continued operation of the NASD/ISE linkage for 6 months, *i.e.*, through August 31, 1991.

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 NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an extension of the Commission's

temporary approval of the NASD/ISE linkage for 6 months through August 31, 1991. Absent an extension, the NASD's link with the ISE will terminate as of March 1, 1991. During the requested extension period, there will be no change in the linkage's operational characteristics or access terms. In sum, the NASD/ISE linkage will continue to operate in accord with the terms of the October 1987 Order.

During the proposed extension, the NASD and ISE will continue to explore various options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage or the pursuit of other initiatives that may be more responsive to the business needs of the sponsors' constituencies. Either outcome will entail another Rule 19b-4 filing that will afford the Commission (and other interested parties) an opportunity to focus on relevant policy and regulatory issues. Meanwhile, continuation of the pilot linkage, as proposed, would be supportive of the NASD's and ISE's efforts to define system linkages capable of accommodating cross-border trading more efficiently.

Another factor likely to affect the evaluation of the NASD/ISE linkage is the introduction of NASDAQ International Service ("SERVICE"), the subject of File No. SR-NASD-90-33.³ Essentially the SERVICE would extend the NASD's automated market-making systems to a European Session running from 3:30 to 9 a.m. (ET) on each U.S. business day. During this period, participating broker-dealers can utilize the SERVICE to quote markets in selected NASDAQ and exchange-listed securities by means of trading facilities located in the U.S. or the U.K. Given the SERVICE's potential for supporting trading in U.S.-registered securities by institutional investors (both foreign and domestic), the structure of the NASD/ISE linkage may be substantially altered. Until the SERVICE has been approved and the NASD has had an opportunity to evaluate its operation, the NASD believes that it is appropriate to maintain the NASD/ISE linkage in its present form.

The statutory bases for the NASD/ISE pilot linkage and the requested extension thereof, are contained in

sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/ISE pilot linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through counsel.⁴ In response, the NASD, after consultation with the ISE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR-NASD-87-20, which the Commission approved by issuing the October 1987 Order. Further, in File No. SR-NASD-89-44 (which resulted in the linkage's authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the pilot project. In the event that the NASD and ISE determine to seek permanent approval of the linkage, every effort will be made to supply the Commission with the empirical data

¹ Securities Exchange Act Rel. No. 24979 (October 8, 1987), 52 FR 37684 (October 9, 1987), (the "October 1987 Order").

² Securities Exchange Act Rel. No. 28863 (November 30, 1990), 55 FR 50430 (December 6, 1990).

³ See Securities Exchange Act Rel. No. 28223 (July 18, 1990), 55 FR 30336 (July 25, 1990); and Rel. No. 28705 (December 17, 1990), 55 FR 52341 (December 21, 1990).

⁴ See Securities Exchange Act Rel. No. 23158 (April 21, 1986), 51 FR 15989 (April 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, Securities and Exchange Commission, dated April 16, 1986.

needed for its deliberations on that rule 19b-4 filing.

With respect to the instant filing, the NASD believes that a six-month extension of the linkage pilot will not create any competitive burden *vis-à-vis* Instinet or any other vendor of securities market information. The linkage will continue to operate in accord with the terms of the October 1987 Order. Moreover, Instinet and other interested parties will have ample opportunity to comment on any subsequent rule 19b-4 filing involving permanent approval and/or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the *Federal Register*, and, in any event, by February 28, 1991, the last business day before expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in section 3 of this rule 19b-4 filing. Moreover, the additional time will enable the sponsoring markets to consider various options and determine the future course of this experimental project. Those deliberations will focus on evaluating feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of securities markets through more efficient computerized systems. Assuming Commission approval of File No. SR-NASD-90-33, operation of the SERVICE may also affect discussion of the future of the NASD/ISE linkage. Under these circumstances, it would be counterproductive to allow the NASD/ISE linkage to cease operation. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of this rule change to a date no later than February 28, 1991.

The Commission finds that the proposed rule change is consistent with

the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and ISE to consider feasible options for enhancing the linkage of defining other automation initiatives to facilitate the efficient handling of international order flow. Accordingly, the Commission believes the NASD/ISE linkage should not be terminated while these efforts are ongoing.

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an additional six (6) month period, inclusive of August 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 25, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-4975 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28915; File No. SR-NYSE-90-33]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Look-at-the-Book Information

I. Introduction

On July 19, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to make available to securities information vendors and "self-vending" member organizations and other financial institutions (collectively, "customers") a specified portion of the limit orders for securities included on the Exchange's Display Books.³ Amendment No. 1, which clarified certain language in the proposal, was submitted to the Commission on December 18, 1990.⁴ The information the Exchange proposes to make available would be known as Look-at-the-Book Information.⁵

The proposed rule change was noticed in Securities Exchange Act Release No. 28375 (August 24, 1990), 55 FR 35487 (August 30, 1990). The Commission received one comment letter on the proposal.⁶

II. The Proposal

The Exchange proposes to make available to its customers a specified portion of the limit orders for securities included on Display Books through its Look-at-the-Book service.⁷ The NYSE

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1990).

³ The Display Book is a chronological log used by specialists to keep a record of the buy and sell orders they receive for execution at specified prices.

⁴ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Commission, dated December 17, 1990 by which the NYSE clarified the specific times of day at which the NYSE will make the Look-at-the-Book information available. Amendment No. 1 specifies that the Exchange will make this information available after the opening of trading, at 10 a.m.; at midday, 12:30 p.m.; and at 3 p.m.

⁵ The term "Look-at-the-Book" is a service mark of the Exchange.

⁶ See letter from Junius W. Peake, Chairman, the Peake/Ryerson Consulting Group, Inc., and Morris Mendelson, Professor of Finance, University of Pennsylvania, to the Secretary, Commission, dated July 30, 1990.

⁷ Currently, NYSE Rule 115 prohibits a specialist from directly or indirectly disclosing to any person.

Continued

currently proposes to distribute eight prices around the current market with total buy/sell limit order quantities for 50 securities. In effect, Look-at-the-Book would present one page of the Display Book. The Exchange proposes to make the Look-at-the-Book information available on a periodic basis during the trading day. Initially, the information would be made available three times per day: after the opening of trading, at midday and prior to the close of trading.⁸

The Exchange states that the Look-at-the-Book information would be made available to customers on a non-exclusive basis. The Exchange proposes to make the information available to customers in a "magazine" or "page" format through the facilities of the Securities Industry Automation Corporation ("SIAC"). Under this proposal, customers would supply their own equipment and communication lines for placement at one of the SIAC operational sites. After receiving the information, customers would be able to display Look-at-the-Book information in the same "magazine" or "page" format in which they receive it and also would be able to retransmit that information internally and to their subscribers.

The Exchange states that it would use a new system to extract Look-at-the-Book information from the Exchange's Display Book system and forward that information to customers. The Exchange also states that it would make Look-at-the-Book information available through different facilities than it currently uses for other data dissemination and communication purposes, thereby assuring that the Look-at-the-Book information facilities will not adversely affect the capacity or operation of any other Exchange system. Finally, the Exchange states that although initially it will not impose any fees for access to Look-at-the-Book information, it reserves the right to do so in the future.⁹

The Exchange states that the purpose of the proposed rule change is to foster the widespread dissemination of limit orders included on the Exchange's

other than a Floor Official or other official of the Exchange, any information regarding the orders entrusted to the specialist, except under certain limited circumstances. For example, the specialist may disclose information contained in his or her book for the purpose of demonstrating the methods of trading to visitors to the Floor and to other market centers in order to facilitate the operation of the Intermarket Trading System. NYSE Rule 115, however, does not preclude the Exchange from making such information available. See NYSE Rule 115.

⁸ See *supra* note 4.

⁹ Any fees imposed by the Exchange would have to be filed with the Commission pursuant to section 19 of the Act.

Display Books. The Exchange believes that by broadening the distribution of limit order information to market participants such as brokers, dealers and investors, it will improve the efficiency and effectiveness of market operations and enhance the ability of market participants to make informed investment decisions.

III. Comments Received

The Commission received one comment letter on the proposed rule change, from Junius W. Peake, Chairman, the Peake/Ryerson Consulting Group, Inc. and Morris Mendelson, Professor of Finance, the University of Pennsylvania.¹⁰ Messrs. Peake and Mendelson recommend that the Commission hold hearings on the NYSE's proposal in order to examine the merits of the Look-at-the-Book proposal. In support of this assertion for hearings on the proposal, Messrs. Peake and Mendelson raise several arguments. First, they argue that there are a number of unanswered questions with respect to the operation and format of the proposal.¹¹ Second, they argue that the proposal does not allow investors to execute against the bids or offers displayed, which raises the potential for market manipulation where fictitious bids and offers may be entered just prior to the displays. Third, they argue that because the NYSE reserves the right to charge customers for their use of Look-at-the-Book, subscribers will not be able to compare the cost of Look-at-the-Book with potential benefits of the service. Finally, Messrs. Peake and Mendelson argue that the NYSE's proposal adds very little useful information for the public investor.¹²

The NYSE has responded to the issues raised by Messrs. Peake and Mendelson with respect to the operation and format of the Look-at-the-Book proposal.¹³

¹⁰ See *supra* note 6.

¹¹ Specifically, the letter asserts that the proposed rule change does not indicate: (1) Which securities will be included in Look-at-the-Book; (2) who will decide which securities are included; (3) what portion of the specialist limit order book will be made available; (4) why the information will be made available only three times a day rather than continually; (5) why the information will be displayed in page rather than digitized format; and (6) why the Exchange is not using the Consolidated Quote System ("CQS") for Look-at-the-Book.

¹² Messrs. Peake and Mendelson also raise several issues with respect to the general operation of the national market system. The Commission believes these issues are beyond the scope of the proposal submitted by the NYSE and are not germane to the Commission's analysis of the proposed rule change.

¹³ Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Commission, dated August 16, 1990, and telephone conversation between Donna Pellicano, NYSE, and Mary Revell, Branch Chief,

First, Messrs. Peake and Mendelson assert that the proposal does not indicate which securities would be included in Look-at-the-Book and who would select the securities. In response, the Exchange has stated that it will include 50 securities in Look-at-the-Book. The 50 specific securities the Exchange initially intends to include in Look-at-the-Book are the 30 Dow Jones Industrial Average stocks, 10 utilities stocks from the Dow Jones Utilities Index and 10 transportation stocks from the Dow Jones Transportation Index. The Exchange has indicated that it selected these 50 securities because they are stocks that are of interest to the public. In addition, the Exchange has stated that it selected these 50 stocks, rather than all 1800 which are traded on the NYSE, so that the Exchange could study Look-at-the-Book in a controlled environment. Second, Messrs. Peake and Mendelson assert that the proposal does not specify what portion of a specialist's limit order book would be made available as a result of Look-at-the-Book. In response, the NYSE stated that it intends to distribute eight prices around the current market with total buy/sell limit order quantities for the 50 securities.

Third, Messrs. Peake and Mendelson ask why the Look-at-the-Book information will be made available three times a day rather than continually. In response, the Exchange stated that it determined to present the Display Book information after the opening, at 10 a.m., and prior to the close, at 3 p.m., because trading is most active at these two times of the day. The Exchange also decided that making Look-at-the-Book information available at the mid-point of the trading day, at 12:30 p.m., would be useful for comparison purposes and because mid-day represents a point halfway between the opening and the close of trading. The Exchange has indicated that it intends to obtain feedback from subscribers after six months as to the utility of presenting Look-at-the-Book information more frequently or continually. The Exchange also stated that the proposal will allow the Exchange to examine the effect on its systems of presenting Look-at-the-Book information three times a day for 50 stocks in order to determine what system enhancements would be necessary to disseminate Look-at-the-Book information for all 1,800 stocks traded on the NYSE on a continuous basis.

Branch of Exchange Regulation, Division of Market Regulation, Commission, October 28, 1990.

Fourth, Messrs. Peake and Mendelson ask why the Look-at-the-Book information will be presented in page rather than in digitized format. In response, the Exchange stated that the limit order information will be presented in digital format and would consist of a unit of eight prices around the current market. The NYSE stated that it selected a set digital format in order to ensure that subscribers would not take the prices of the various limit orders out of context.

Finally, Messrs. Peake and Mendelson ask why the Exchange is not using the CQS for Look-at-the-Book. In response, the Exchange stated that it determined not to use the CQS for Look-at-the-Book because the CQS collects and disseminates current bid and offer quotations from and to all market centers in which listed stocks are traded. Through Look-at-the-Book, on the other hand, the Exchange proposes to make available a "page" containing certain limit order information which may contain not only the current bid and offer for a particular stock, but also may include other information not currently disseminated through CQS, including prices away from the market and size. The Exchange believes that it would not be appropriate to use the CQS to disseminate Look-at-the-Book information because CQS does not currently have the capacity to disseminate this information.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 1

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11A(a)(1)(C)(iii) ¹⁴ of the Act. Section 6(b)(5) of the Act requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 11A(a)(1)(C)(iii) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the NYSE's Look-at-the-Book proposal, which will make available to brokers, dealers, and investors limit order information included on the NYSE's Display Books, should further the principles of section 6(b)(5) as well as section 11A of the Act by broadening the public dissemination of market information. Because limit orders are orders to buy or sell a security at a specific price, the orders represent potentially valuable information with respect to the conditions of the market. At the present time, Exchange specialists are prohibited from disclosing this information publicly.¹⁵ Through Look-at-the-Book, the NYSE proposes to provide an opportunity for market participants to access limit order information for 50 securities three times per day. Look-at-the-Book would display the best buy and sell limit orders as well as the three preceding buy and sell orders, and the quantity at each price. As a result, Look-at-the-Book should promote section 6(b)(5)'s objectives and enhance the ability of market participants to make informed investment decisions. Moreover, the NYSE's concept of providing access to its Display Books is consistent with suggestions offered by various studies of the October 1987 Market Break.¹⁶

The Commission also believes that the proposal is consistent with section 11(b) of the Act.¹⁷ Section 11(b), among other things, prohibits a specialist or Exchange official from disclosing information with respect to specialist orders which is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist. Because Look-at-the-Book will make Display Book information available to securities information vendors, "self-vending" member organizations and other financial institutions on a non-exclusive basis, the Commission believes that the information is available to all members of the Exchange. Accordingly, the proposal is consistent with section 11(b)'s requirements.

¹⁴ See *supra* note 7.

¹⁵ See, e.g., *Report of the Presidential Task Force on Market Mechanisms* ("Brady Report"), at vii (January 1988). See also Wells Fargo Investment Advisors, *Reflections on the Stock Market Crash of October 1987* ("Wells Fargo Report") at 23 (January 25, 1987). Both the Brady Report and the Wells Fargo Report concluded that making the specialist book public could address market volatility by providing public investors with the opportunity to respond to large order imbalances.

¹⁷ 15 U.S.C. 78k (1988).

According to the NYSE, the systems supporting the Look-at-the-Book service have adequate capacity, security and contingency protections. Moreover, according to the NYSE's representations, the implementation of the proposed rule change will have no adverse effect on the capacity or security of the Exchange's other systems (such as the Display Book).

The Commission does not agree with the recommendation of Messrs. Peake and Mendelson that it is necessary to hold hearings on the Look-at-the-Book proposal. The proposal was published in the *Federal Register* for the full statutory period under the Act ¹⁸ which gave interested persons the opportunity to express their views and arguments with respect to the proposal. In fact, the Commission received only one comment letter, from Messrs. Peake and Mendelson, as a result of the proposed rule change. As described below, the Commission believes that the NYSE has addressed the relevant questions raised in the comment letter. The Commission, therefore, finds that it has met its statutory notice requirements under section 19 of the Act ¹⁹ through publication of the proposed rule change which provided the opportunity for the submission of written views and comments by interested persons, and believes it is unnecessary to hold hearings on the proposal.

After careful consideration of Messrs. Peake and Mendelson's substantive arguments with respect to the proposal, the Commission believes that the NYSE's Look-at-the-Book proposal adequately addresses the issues raised in their comment letter. Many of the substantive issues raised by Messrs. Peake and Mendelson were addressed adequately in the NYSE's Notice of Proposed Rule Change as published in the *Federal Register*. For example, the Notice responds to the questions raised by Messrs. Peake and Mendelson regarding the number of securities and the range of prices thereof which will be included in Look-at-the-Book as well as who will select the securities. The Notice states that the NYSE will provide the limit order information for 50 securities included on the Display

¹⁸ See Securities Exchange Act Release No. 28375 (August 24, 1990), 55 FR 35487 (August 30, 1990) ("Notice of Proposed Rule Change"). See *infra* note 19.

¹⁹ 15 U.S.C. 78e(b)(1) (1988). Section 19(b)(1) of the Act provides that the Commission, upon the filing of a proposed rule change, must publish notice thereof and give interested persons the opportunity to submit written data, views, and arguments concerning the proposed rule change.

¹⁴ 15 U.S.C. 78f and 78k-1 (1988).

Books, with eight prices for the securities around the current market.²⁰

The remaining issues raised by Peake and Mendelson also do not dictate against approval of the proposal.²¹ The Commission believes it is reasonable for the Exchange to craft a limited, controlled design for the project to gain experience with Look-at-the-Book. Thus, the decision to disseminate information only three times a day and in page format, as well as the Exchange's plan for the other aspects of the project, are within the NYSE's discretion in designing the initial phase of Look-at-the-Book.²²

Moreover, the Commission does not believe that the absence of an automatic execution capability against bids or offers displayed on Look-at-the-Book leads to a substantial potential for market manipulation. Indeed, by providing dissemination of more market information to the public, Look-at-the-Book should decrease the potential for market manipulation by exposing order flow to all market participants. The placement of fictitious orders on the book away from the best quoted market would appear to be an extremely ineffective means to effect manipulation. At best, such orders suggest below the market. They in no way suggest an upward or downward trend likely to influence other persons to purchase or sell the security. Thus, the entry of fictitious quotations which improve the best market or the aggressive effectuation of transactions would appear far better vehicles for manipulation than the entry of fictitious limit orders. Finally, were any manipulation attempted, the NYSE's electronic book would provide a locked in audit trail of all orders. Accordingly, any concerted entry of orders shortly before a dissemination of the book information would be easily detectable. The Commission believes that the

market benefits of providing investors with information regarding order imbalances, albeit on a limited basis, far outweigh any theoretical concerns regarding the increased potential for market manipulation.

Finally, the Commission does not believe that because the NYSE reserves the right to charge its customers for Look-at-the-Book, potential customers will not be able to weigh the costs and benefits of subscribing to Look-at-the-Book. The Commission expects that any customer who subscribes to Look-at-the-Book will become aware of any benefits of the system, and would be able to weigh these against the costs of any system fees the Exchange may impose in the future. In addition, any fees imposed by the Exchange for Look-at-the-Book would have to be filed with the Commission pursuant to section 19 of the Act.²³

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. The proposed rule change which was published in the Federal Register for the full statutory period provided that the Look-at-the-Book information would be made available three times a day.²⁴ The proposed amendment is simply a clarification of the three specific times of day that the Exchange proposes to make the Look-at-the-Book information available to customers.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Dated: February 25, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-4970 Filed 3-1-91; 8:45am]
BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration (Provident Bancorp, Inc., Common Stock, No Par Value) File No. 1-8019

February 26, 1991.

Provident Bancorp, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of

²⁰ See *supra* note 19 for a general summary of section 19 notice requirements.

²¹ See Notice of Proposed Rule Change, *supra* note 18.

²² 15 U.S.C. 78s(b)(2) (1988).

²³ 17 CFR 200.30-3(a)(12) (1990).

1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE") and the Cincinnati Stock Exchange, Inc. ("CSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock has been listed for trading on the National Association of Securities Dealers Automated Quotation System ("NASDAQ")/National Market System ("NMS") since February 7, 1989. According to the Company, the NASDAQ/NMS listing provides an adequate market for the trading of its common stock. In addition, delisting from the PSE and CSE will allow the Company to realize certain cost savings.

Any interested person may, on or before March 19, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the CSE and/or PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-4973 Filed 3-1-91; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18017; International Series Rel. No. 234; 812-7684]

Thomson Fund Group; Application

February 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Thomson Fund Group.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity or convertible debt securities of foreign issuers that, in each

²⁰ See Notice of Proposed Rule Change, *supra* note 18 (citing letter from James E. Buck, Senior Vice President and Secretary, NYSE to Mary Revell, Branch Chief, Commission, dated August 16, 1990).

²¹ See *supra* note 13 and accompanying text.

²² In light of the potential value of limit order information in indicating the depth of the market, the Commission believes that continuous updates of such information would appear desirable. Moreover, information regarding priced orders prior to the opening also appears to be beneficial to market participants and public customers. In this regard, the NYSE should submit a detailed report on its experience with the initial phase of Look-at-the-Book and its analysis regarding the costs and benefits of a continuous update system to the Commission by September 1, 1991. In addition, any increase in the number of securities included in Look-at-the-Book beyond the initial 50 securities would have to be filed with the Commission as a proposed rule change pursuant to section 19 of the Act.

of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3-1.

FILING DATE: The application was filed on February 15, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and servicing applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One State Street Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-2023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company registered under the Act. Applicant currently offers nine series shares. Applicant is managed by Thomson Advisory Group L.P. Warburg Investment Management International Ltd. and Van Eck Associates Inc. each serves as sub-adviser to one series of applicant.

2. Applicant seeks to be able to diversify further the assets of some of its series by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed

amendments to rule 12d3-1 ("Proposed Amendments"). See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of the Proposed Amendments.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin security" status is, generally speaking, available only to securities traded in United States markets.¹ Accordingly, applicant seeks an exemption from the "margin security" requirement of rule 12d3-1.

2. The Proposed Amendments provide that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the Proposed Amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested: Applicant will comply with the provisions of the proposed

¹ The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in the United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T. See 12 CFR 220.2 (i) and (g)(6).

amendments to rule 12d3-1 (Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)), and as such amendments may be repropoed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-4974 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 25, 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.

Bureau of the Public Debt

OMB Number: 1535-0031.

Form Number: PD 3570.

Type of Review: Extension.

Title: Request for Reissue of United States Retirement Plan or Individual Retirement Bonds to Correct an Error in Registration.

Description: Used by bond owners to request reissue of their retirement type savings bonds to correct the registration.

Respondents: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 17 hours.

OMB Number: 1535-0033.

Form Number: PD 3564.

Type of Review: Extension.

Title: Request for Reissue of United States Retirement Plan or Individual Retirement Bonds to Change Beneficiary or Reflect Change of Name.

Description: Used by bond owner to request reissue of retirement

securities to change beneficiaries or to reflect a change in name.

Respondents: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17 hours.

OMB Number: 1535-0035.

Form Number: PD 4681.

Type of Review: Extension.

Title: Application for Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding \$1,000 by the Survivor of a Deceased Owner Whose Estate is Not Being Administered.

Description: Used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

Respondents: Individuals or households.
Estimated Number of Respondents: 3,965.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 991 hours.

OMB Number: 1535-0036.

Form Number: PD 2513.

Type of Review: Extension.

Title: Application by Voluntary Guardian of Incompetent Owner of United States Savings Bonds/Notes.

Description: Used by voluntary guardians of incompetent bond owner(s) to establish their right to act on behalf of the incompetent in requesting payment of the bonds.

Respondents: Individuals or households.
Estimated Number of Respondents: 7,650.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,600 hours.

OMB Number: 1535-0086.

Form Number: PD 5262.

Type of Review: Extension.

Title: Reinvestment Request for Treasury Notes and Bonds

Description: This form is used to request the reinvestment of a Treasury note or bond at maturity, to cancel a reinvestment request or change a reinvestment that was previously requested.

Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 140,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 14,000 hours.

Clearance Officer: Rita DeNagy (202) 447-1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW, Washington, DC 20239-0001.

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. 91-4960 Filed 3-1-91; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: February 25, 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: 1545-0367.

Form Number: IRS Forms 4804 and 4802.

Type of Review: Extension.

Title: Transmittal of Information Returns Reported Magnetically/Electronically (4804) and Transmittal of Information Reported Magnetically/Electronically (Continuation of Form 4804).

Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments taxable income must file reports of this income with IRS. In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are used to provide a signature and balancing totals for magnetic media filers and information returns.

Respondents: State or local governments, Farms, Business or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 37,640.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 4804	Form 4802
Recordkeeping.....	18 min.	18 min.
Preparing and sending the form to IRS.	18 min.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/

Recordkeeping Burden: 45,406 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. 91-4961 Filed 3-1-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 26, 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: 1545-0284.

Form Number: IRS Form 5309.

Type of Review: Extension.

Title: Application for Determination of Employee Stock Ownership Plan.

Description: Form 5309 is used in conjunction with Form 5300 or Form 5303 when applying for a determination letter as to a deferred compensation plan's qualification status under section 409 or 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 462.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hrs., 30 min.
Learning about the law or the form—1
hr., 23 min.
Preparing and sending the form to
IRS—1 hr. 32 min.

Frequency of Response: On occasion.

*Estimated Total Reporting/
Recordkeeping Burden:* 3,895 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. 91-4962 Filed 3-1-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 42

Monday, March 4, 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 DEPOSIT INSURANCE CORPORATION

Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 3:00 p.m. on Tuesday, February 28, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum re: Legal Division Management Information System Proposal.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: February 27, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-5094 Filed 2-27-91; 4:40 pm]

BILLING CODE 6714-01-M

DEPARTMENT OF JUSTICE PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94-409) (5 U.S.C. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, February 26, 1991 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. The meeting ended at or about 10:30 a.m. The purpose of the meeting was to decide approximately 7 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Further, a portion of the meeting was for the purpose of the approval of hearing examiners pursuant to 18 U.S.C. 4204(a)(2)(A). Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Jasper Clay, Jr., Vincent Fichtel, Jr., Carol Pavilack Getty, and Victor M.F. Reyes.

In witness whereof, I made this official record of the vote taken to close

this meeting and authorize this record to be made available to the public.

Dated: February 27, 1991.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 91-5165 Filed 2-28-91; 1:51 pm]

BILLING CODE 4410-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, March 20, 1991, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue, NW., Washington, DC

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations part 901, and is open to the public.

Dated: February 27, 1991.

M.J. Brodie,

Executive Director.

[FR Doc. 91-5182 Filed 2-28-91; 3:47 pm]

BILLING CODE 7630-01-M

federal register

**Monday
March 4, 1991**

Part II

Department of Labor

**Employment Standards Administration,
Wage and Hour Division**

**29 CFR Part 801
Application of the Employee Polygraph
Protection Act of 1988; Final Rule**

DEPARTMENT OF LABOR**Employment Standards Administration,
Wage and Hour Division****29 CFR Part 801**

RIN 1215-AA49

**Application of the Employee
Polygraph Protection Act of 1988**

AGENCY: Wage and Hour Division,
Employment Standards Administration,
Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of revised regulations under the Employee Polygraph Protection Act of 1988. These regulations provide most employees and prospective employees in the private sector with protections against lie-detector testing in both pre-employment settings and during the course of their employment, with certain limited exceptions.

EFFECTIVE DATE: April 3, 1991.

FOR FURTHER INFORMATION CONTACT:
Charles E. Pugh, Assistant
Administrator, Office of Policy, Planning
and Review, Wage and Hour Division,
U.S. Department of Labor, Room S-3506,
200 Constitution Avenue NW.,
Washington, DC 20210, (202) 523-5409.
This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Employee Polygraph Protection Act of 1988 ("EPPA" or "Act") was enacted on June 27, 1988. EPPA prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. The Act contains several limited exemptions which authorize polygraph tests under certain conditions, including the testing of: (1) Employees who are reasonably suspected of involvement in a workplace incident that results in economic loss or injury to the employer's business; (2) certain prospective employees of private armored car, security alarm, and security guard firms; and (3) certain current and prospective employees in firms authorized to manufacture, distribute, or dispense controlled substances. Federal, State and local government employers are exempted from the Act, with respect to polygraph testing of their employees. In addition, an exemption permits testing by the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions. Employers who violate any of the Act's provisions may be assessed civil money penalties up to \$10,000.

Interim final regulations, 29 CFR part 801, were published in the *Federal Register* on October 21, 1988 (53 FR 41494), with an effective date of December 27, 1988 (the effective date of the statute). The *Federal Register* notice provided for an extended comment period until February 27, 1989. A total of 65 comments were received during the comment period on the interim final regulations, from individuals, employers, polygraph examiners, trade associations, and others. Nearly 40 percent of the comments were from individual business firms and trade associations in the security services industry, or law offices and members of Congress on their behalf. Comments were received on behalf of employee interests from the American Pharmaceutical Association, the New Jersey Pharmaceutical Association, and the Service Employees International Union. Several comments were also received from employers and trade associations in the controlled substances industry. In addition, a number of inquiries from the public regarding the regulations were received during the period the interim rule has been in effect and have been included in the rulemaking record. These inquiries have been treated as comments and are summarized herein and dealt with as appropriate. The major issues raised by the commenters and others are identified below, as are the significant changes that have been made in the final regulatory text in response to the comments received. In addition to the substantive comments discussed below, many commenters submitted minor editorial suggestions, some of which have been adopted and some of which have not been adopted. Finally, a number of other minor, editorial, and housekeeping changes have been made to better organize and simplify the regulatory text.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in the interim final rule published on October 21, 1988 (53 FR 41494) were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and OMB approved the requirements for use through December 31, 1991 (OMB control number 1215-0170).

On February 21, 1990 the Supreme Court issued its decision in *Dole v. United Steelworkers of America* which held that information collection requirements mandating disclosure of information to third parties, specifically to parties other than the federal government, are not subject to the OMB

review process which was established by regulations at 5 CFR part 1320 promulgated under the Paperwork Reduction Act. Consequently, only those portions of the EPPA regulations which require employers to maintain records remain subject to OMB review. These requirements are set forth in §§ 801.12(a)(5) and 801.30.

The Wage and Hour Division has submitted a revised version of the reporting and recordkeeping requirements to OMB. As a result of this revised estimate, the total burden hours estimate has been reduced by 102,735 hours. Public reporting burden for this collection of information, as revised, is estimated to average as follows: 1. Retention of written notice to examinee of polygraph testing—1 minute per response; 2. Retention of written notice to polygraph examiner identifying persons to be examined—1 minute per response; 3. Retention of test record by polygraph examiner—1 minute per response; 4. Retention of record by polygraph examiner of number of EPPA tests conducted daily and length of each test—½ minute per response; 5. Retention of test record by employer—1 minute per response; (see 29 CFR part 801.30); 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 to the Office of Information Management, U.S. Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Summary of Rule

Part 801 is divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on the use of lie detectors, the posting of notices, and interpretations regarding the effects of the Act on other laws or collective bargaining agreements as provided in section 10 of EPPA. Subpart B sets forth rules regarding the statutory exemptions from the requirements of the Act. Subpart C provides the restrictions on polygraph usage under the applicable exemptions. Subpart D sets forth the recordkeeping requirements and the rules on disclosure of polygraph test information. Subpart E describes the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures

and rules of practice necessary for the administrative enforcement of the Act.

Summary of Major Comments

I. Definitions/Coverage and Related Matters

Poster Requirement (§ 801.6)

Section 4 of EPPA requires the Secretary of Labor to distribute to employers a notice describing employee rights and employer responsibilities. Employers are required to " * * * post and maintain such notice in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted." This required poster was mailed to 7.2 million employers in December 1988. A number of commenters, including five trade associations with national constituencies, expressed concern about the general poster "glut" imposed by Federal and State law or regulations. The National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, Food Marketing Institute, and National Retail Merchants Association argued that the poster was unnecessary in States that prohibit the use of the polygraph or have similar notice posting requirements. The National Association of Retail Dealers of America, Inc., urged cooperation among agencies to consolidate poster requirements or, in the alternative, inform Congress of the growing problem. Two other commenters, Cone Mills Corporation and the National Training Center of Polygraph Science, suggested that employers should be excused from the requirement unless they actually use or reserve the right to use polygraph testing. Finally, the American Pharmaceutical Association felt that the content of the poster should be expanded to include a listing of examinee's rights and a toll-free or other telephone number for questions. In addition to these comments, numerous objections to the poster were received from the public after its mailing in December 1988. These concerns focused primarily on the so-called "glut" of posters and/or the need to post if there was no intention by an employer to ever use the polygraph.

The poster requirement is statutory and no authority is provided to waive the requirement by regulation. Twenty-four States and the District of Columbia have laws prohibiting or restricting the use of lie detector tests as a condition of employment or continued employment. While a number of these laws appear to prohibit lie detector tests outright, most permit "voluntary" testing. Replacing the Federal poster requirement with other notices required by State or local

governments is complicated by the various differences in the respective statutes. (Under section 10 of EPPA, a more restrictive State law is not preempted by the Federal law.) Further, the costs associated with the development and distribution of a new poster as suggested are not offset by the potential benefits. Accordingly, § 801.6 is adopted in the final rule without change.

Scope of Coverage

The American Polygraph Association indicated that the scope of the Act's coverage was confusing, and suggested a clarification of § 801.3. In this regard, section 3 of the Act extends coverage to "any employer engaged in or affecting commerce or in the production of goods for commerce." Section 801.3 of the interim final rule merely repeated this statutory phrase without any amplification except " * * * unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part."

Although EPPA incorporates the definition of commerce in the Fair Labor Standards Act of 1938 (FLSA), its coverage is much broader than the FLSA, which extends only to employees and enterprises "engaged in commerce or in the production of goods for commerce." In interpreting this phrase, the Supreme Court has often repeated that the FLSA does not extend to businesses merely "affecting commerce," since "Congress did not exercise in this Act the full scope of the commerce power." (See, for example, *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 570-71 (1943).) Courts when reviewing other statutes, like the Age Discrimination in Employment Act, which use language similar to that in EPPA, have found that, by using the phrase "affecting commerce," Congress intended coverage to be coextensive with that of the commerce clause, or as broad as the scope of the clause. (See, for example, *Godwin v. Occupational Safety and Health Review Commission*, 540 F.2d 1013, 1015 (9th Cir. 1976).) Thus, Congress intended for EPPA to have the broadest possible coverage under the commerce clause because of the use of the words "affecting commerce." A review of available legislative history supports this conclusion. Section 801.3 has been modified to make clear that virtually every private employer, without regard to the extent of interstate or intrastate activities, would be covered by the Act's provisions.

Treatment of Tests Administered by Police Authorities

The Office of the Chief Postal Inspector, U.S. Postal Service, indicated a need to clarify the term "directly or indirectly" in § 801.4 with respect to Federal criminal investigations. The Postal Inspection Service (PIS) polygraphs employees of banks, airlines, truck lines, etc. in the course of conducting investigations into criminal misconduct, such as mail loss or theft. Suspect employees are often difficult to locate away from their place of employment. According to PIS, it is a common practice in the law enforcement community to interview and, if the individual agrees, to conduct a polygraph during the employee's tour of duty. The traditional assistance on the part of employers is jeopardized, according to PIS, by the broad language in § 801.4 as employers are concerned that their cooperation will be construed as a violation of the Act's lie detector prohibitions.

The treatment of polygraph tests administered by police authorities during the course of investigations of thefts or other incidents of wrongdoing reported by employers has also been the subject of public inquiries, particularly local government police departments. One of the reasons cited in the legislative history for excluding Federal, State and local governments from the Act's provisions was an intent not to frustrate the criminal investigation process, and these comments have merit. A new paragraph (b) has been added to § 801.4 to make clear that employers are not responsible under EPPA for any test police authorities might decide to administer during the course of their investigation of any theft or other incident involving economic loss which the employer reported to such authorities. This new paragraph also clarifies the type of cooperation or assistance which may be given by an employer at the request of police authorities without incurring any liability under the Act. For example, allowing a test on the employer's premises during working time and similar types of cooperation would not be construed as being within the Act's prohibited conduct. The question also arose concerning practices in some local communities where employers reimburse police examiners for tests conducted on employees suspected by the employer of wrongdoing, and practices in some communities where police authorities request employer testing of employees before an investigation is initiated on a reported

theft. Activities within the Act's prohibitions would include all tests in which employer participation is direct, i.e., employer administers the test at the request/direction of police authorities, or indirect, i.e., employer reimburses police authorities for the costs of tests they administer. These limitations are necessary to prevent evasion of the Act's prohibitions through such actions. Additionally, a new subsection (c) makes clear that a fairly common practice of police authorities to disclose test results to employers, particularly when the test indicates deception on the part of an employee, causes the employer to violate section 3(2) of the Act, which prohibits employers from "using, accepting, or inquiring" about the results of a lie detector test.

Definition of State and Local Governments

The phrase "State or local government or political subdivision of a State or local government" is not defined in section 801.10 of the interim rule. Additional clarification is provided as a result of questions raised about the status of certain governmental entities. A new paragraph (c) interprets the term, consistent with relevant case law (*NLRB v. Natural Gas Util. District of Hawkins County, Tenn.* 402 U.S. 600 (1971)) to provide guidance in the determination of whether or not an entity is a "political subdivision" and, thus, within the scope of the governmental exemption.

Use of Polygraph as a Placebo

Questions were raised by public inquirers about the use of the polygraph instrument as a placebo (i.e., using lie detector equipment not for the purpose of rendering any diagnostic opinion, but as a simulated or threatened tool for persuasion), indicating a need to clarify whether or not such conduct violates the prohibitions in section 3 of the Act. During the pretest phase of an examination, the interrogation of the examinee often elicits confessions or other admissions of wrongdoing. Apparently the threat of being connected to the instrument is often effective in gaining information.

Section 3 of the Act, in general, prohibits an employer from requiring, requesting, suggesting (emphasis supplied) or causing, directly or indirectly, any employee or prospective employee to take a lie detector test. Threatening to use a lie detector instrument, having it in the room, or connecting the instrument to an examinee without actually using it for purposes of rendering any diagnostic opinion (placebo) gives the appearance

that the instrument is available, or in fact, being used for diagnostic purposes. In the view of the Department, this indirect or simulated use of the instrument is within the broad prohibition of section 3(1) of EPPA. Placing the instrument in the room used for questioning, unconnected to the employee or prospective employee, does not alter this conclusion. The mere suggestion or threat that the instrument is to be used during the course of the interview would also be within the scope of prohibited lie detector uses.

Accordingly, a new paragraph (d) has been added to § 801.4 to make clear the Department's interpretation that such uses of a polygraph instrument are prohibited.

Handwriting Tests

The definition of the term "lie detector" specifically excludes written or oral tests commonly referred to as "honesty" or "paper and pencil" tests. Another method used to evaluate the personality profile of job applicants is "graphoanalysis" or handwriting analysis testing, and questions were raised regarding the application of the statute to such graphology tests. While the validity of graphology is a matter of public debate and skepticism, like paper and pencil tests, it is the view of the Department that such handwriting tests are not precluded by the statute. The definition of the term "lie detector" in § 801.2(d)(2) has been modified accordingly.

Voice Stress Analyzers

Questions arose as to whether interview/interrogation systems that use voice stress analysis fall within the statutory definition of "lie detector". Under such systems, an interview with a job applicant or an employee is tape recorded, and the recording is replayed through a psychological stress evaluator instrument which is locally situated or replayed across phone lines to a distant location. The prospective employee or employee may or may not know that the interview is to be tape recorded, and, in most cases, is not informed that the recording will be processed through a device for purposes of measuring stress in their responses to questions asked during the interview. The user of the system is typically provided a report which may only identify levels of stress. However, the employers or other users generally understand that the measurement of stress associated with an answer implies deception. Section 801.2(d)(1) has been revised to make clear that this type of voice stress analysis is within the scope of the term "lie detector" as defined by the Act.

Coverage of Foreign Corporations

The Department was requested to clarify by opinion the status of foreign corporations and foreign nationals under the Act. It is the Department's position that the Act is applicable to all employees of a covered employer regardless of citizenship status, that foreign corporations operating in the United States are not exempt, and that any actions relating to the administration of lie detector tests which occur within the territorial jurisdiction of the United States are subject to the Act's provisions even though the actual examinations may be administered in a foreign location, such as aboard a cruise ship outside United States territorial waters. By the same token, transfer of an employee to a location outside United States territory for the purpose of administering a polygraph test would be considered to be covered by the Act. Section 801.3 has been modified accordingly.

Scope of Employer-Employee/Prospective Employee Relationship for Purposes of Coverage Under EPPA

Section 2(2) of EPPA defines "employer" as including "any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee." Section 801.2(c) of the interim final rule did not amplify the statutory definition except to exclude a polygraph examiner employed for the sole purpose of conducting a polygraph test. The Act (as well as the interim final regulations) contains no definition of the term "employee."

One commenter questioned the status of independent contractors under EPPA since the term "employee" was not defined. Another commenter, the American Polygraph Association, expressed the opinion that the regulations should make clear that the term "employer" does not include "former employer." The Employment and Training Administration of the Department suggested that the regulations should explain that employee referral services, such as those provided by the Employment Service or under the Job Training Partnership Act, are outside the meaning of "employer."

In the Department's view, EPPA prohibits the use of polygraphs by employers subject to the Act unless specifically exempted; polygraph testing by persons other than an employer is not precluded by the Act. Thus, these restrictions do not apply, for example, to public agencies in the performance of

law enforcement activities, to lawyers who administer lie detector tests to clients and potential witnesses, or to fishing tournament officials who administer lie detector tests to winning contestants. Similarly, although the abuses Congress intended to correct may be present with *bona fide* independent contractors, such as truck owner-operators, the Department does not believe EPPA applies to such *bona fide* independent contractor relationships. Thus, EPPA restrictions do not apply to the testing of an individual person who is a *bona fide* independent contractor (but do apply with respect to employees of such contractor) by a person, firm, or public agency which has a contractual relationship with such person. Determinations as to whether an individual is an employee or a *bona fide* independent contractor are based on the "economic reality" test established in labor standards case law. See, e.g., *Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

The administration of tests by employment placement agencies, job recruiting firms, or vocational trade schools at the request of either the job candidates or potential employers creates another question. The Department believes that EPPA prohibits such tests (except where a statutory exemption applies) since the polygraph tests are conducted on behalf of a prospective employer (whether or not the employer actually seeks this information). New § 801.8 of the final rule makes clear that employment agencies, including State Employment Services, are employers within the meaning of the Act because they are "acting directly or indirectly in the interest of an employer" in relation to a prospective employee for the purposes of EPPA. This section also provides, however, that such entities are not liable for EPPA violations if job referrals are made to employers who perform polygraph testing of applicants and the employment agency or other entity had no reason to know of the testing.

The interim final regulations did not address the question whether former employers constitute employers under the Act with respect to the statutory prohibitions on discrimination. An examination of other anti-discriminatory laws reveals that courts have interpreted these acts broadly, prohibiting discrimination by former employers although there was no employer-employee relationship at the time the alleged discrimination occurred. Courts have considered that the term "employee" under the FLSA

extends to a former employee because the word "derives meaning from the context of that statute, which 'must be read in the light of the mischief to be corrected and the end to be attained.'" *Dunlop v. Carriage Carpet Co.*, 548 F.2d 139, 144 (6th Cir. 1977) (quoting *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 259 (1940)). Another court has analogized *Carriage Carpet* so that a former employee was protected by anti-retaliatory provisions of title VII of the Civil Rights Act of 1964. *Rutherford v. American Bank of Commerce*, 565 F.2d 1162, 1166 (10th Cir. 1977).

Similarly, an appellate court urged that the "plain-meaning rule should not be applied to produce a result which is actually inconsistent with the policies underlying the statute * * * [A] strict and narrow interpretation of the word 'employee' to exclude former employees would undercut the obvious remedial purposes of title VII." *Bailey v. USX Corporation*, 850 F.2d 1506, 1509 (11th Cir. 1988). Furthermore, the Court of Appeals for the Fifth Circuit has interpreted the term in the ADEA broadly enough to include a former employee "as long as the alleged discrimination is related to or arises out of the employment relationship." *EEOC v. Cosmair, Inc., L'Oreal Hair Care Division*, 821 F.2d 1085, 1088 (5th Cir. 1987).

Moreover, previous decisions issued by the Secretary of Labor have held that, under the Energy Reorganization Act (ERA), "applicants for employment and former employees are protected from discrimination by the prospective and former employers, although no employer-employee relationship existed at the time of the alleged discrimination." *Hill v. Tennessee Valley Authority and Ottney v. Tennessee Valley Authority*, 87-ERA-23 and 87-ERA-24 (Decision and Order of Remand by the Secretary of Labor, May 24, 1989), slip op. at 10.

The Department therefore concludes that Congress intended "employee" in EPPA to include a former employee so long as the discrimination covered by the Act is related to or derived from the employment relationship. Accordingly, Section 801.8 of the final regulations explains that the term "employer" as used in the Act includes a former employer.

Government Employer Exemption

A review of the legislative history provides insight into how Congress intended the exemptions for Federal, State and local government agencies to be interpreted. A Senate committee report on a related Senate bill (S.1904), which exempted governmental

employers and individuals under contract with federal agencies involved in intelligence and counter intelligence functions, stated that "those not regulated [by S.1904] would be *public sector employees* and employees of DOD, DOE, NSA, CIA, and FBI contractors with access to classified information and subject to counter-intelligence investigations." S. Rep. No. 284, 100th Cong., 2d Sess. 50 (1987) (emphasis added).

The conference report notes that the conference agreement retains the exemptions for Federal, state, and local governments from both the House bill and the Senate amendment. This report also discusses the exemption for the Federal Government to administer lie detector tests to certain employees of private contractors engaged in intelligence and counterintelligence work. H.R. Conf. Rep. No. 659, 100th Cong., 2d Sess. 12 (1988). The conference report further states that "[s]ince the Act does not apply to State and local governments it would not impede their ability to enforce existing statutes or to enact subsequent legislation restricting the use of lie detectors with respect to *public employees*." H.R. Conf. Rep. No. 659, 100th Cong., 2d Sess. 16 (1988) (emphasis added).

For these reasons, the final rule makes clear that the exclusion from the Act applies only to the Federal, State, or local government entity with respect to public employees. It does not extend to lie detector testing by or on behalf of government entities, or contractors or nongovernmental agents of a government entity, with respect to any employees in the private sector. This interpretation (as reflected in § 801.10 in the final rule), in the Department's view, is consistent with the structure of the Act and the legislative history.

II. Ongoing Investigation Exemption Inventory Shortages

The Food Marketing Institute, National Retail Merchants Association, and National Automatic Merchandising Association argued that an atypical inventory shortage should qualify as a "specific incident" for testing purposes under the limited exemption for ongoing investigations (EPPA section 7(d)), e.g., a sudden increase to 5% in an accounting period from a normal 2% in shortages. This position was also supported by the American Polygraph Association and several polygraph examiners. The Service Employees International Union, however, noted that the rule should clearly preclude testing where losses are indicated by frequent inventory checks,

such as those occurring in the jewelry industry.

Random-type testing, or what the legislative history characterized as fishing expeditions, was specifically targeted as a prohibited act by EPPA's lie detector restrictions. The example of missing inventory, a common business problem, was used in the interim final rule to illustrate the "specific incident or activity" limitation of the exemption, and to clarify the principle that testing under the exemption was permissible for the purpose of confirming who had committed a discrete act already disclosed through investigation, but not for determining whether such an act had occurred. For the exemption to apply, the conditions of an "ongoing investigation" of a "specific incident or activity" involving "economic loss or injury to the employer's business" must all be met. Thus, to qualify for testing, specific missing inventory must be identified and there must be evidence of wrongdoing, not bookkeeping or delivery errors. A broadening of the term "specific incident or activity" to include uninvestigated shortages in cash or inventory as suggested by some commenters would not be in accord with the statutory language or legislative history.

In singling out missing inventory as an example, the interim final rule apparently implied to some commenters that missing inventory or cash could never constitute a basis for testing. While a sudden escalation of shortages in a given accounting period, by itself, would not provide a sufficient basis for testing, the testing of an employee would be permissible if a subsequent investigation into such shortages pinpointed actual missing items as a result of wrongdoing, and provided information to support the other required statutory prerequisites of "access" and "reasonable suspicion" with respect to the property that is the subject of the investigation. Section 801.12(b) has been revised to make this point more clear.

Economic Loss or Injury

Section 7(d) of the Act requires that the ongoing investigation which is the subject of the polygraph test involve "economic loss or injury to the employer's business."

The legislative history provides some guidance as to the meaning of economic loss or injury. The Senate Committee Report (S. Rep. No. 284, 100th Cong., 2nd Sess., 48) stated:

The Committee intends the requirement in section 7(d)(1) of a specific economic loss or injury to the employer's business to be narrowly construed. But there are specific

incidents, such as check-kiting, money laundering, or the misappropriation of inside or confidential information which might actually result in gain to the employer in the short term, yet are specific incidents of employees which the employer should vigorously investigate. These types of incidents meet the requisite "injury" standard even though resulting in short-term gain, and an employer may request polygraph examination for these types of specific incidents. Similarly, such instances as theft from property managed by an employer would meet the requisite standard.

The legislative history makes clear that unintentional losses stemming from a truck or workplace accident would not meet the required injury standard, but instances of " * * * theft from property managed by an employer * * *" would. Insight into the meaning of this latter phrase is gleaned from remarks of Senator Hatch during the debate on the Senate version of the legislation [S.1904, Congressional Record—S1646, March 1, 1988]:

The committee's report makes it clear that the term economic loss or injury applies not only to instances where the employer can demonstrate a financial loss but also those instances, such as money laundering, which might result in a short-term gain to the employers. Similarly, the report makes it clear that also included under this term would be instances such as theft from property managed by an employer. This language was added to address the fact that many crimes and situations may cause only indirect economic loss or injury. For example, a repairman at an apartment building might steal repeatedly from building tenants. An artful lawyer might argue that such theft would not cause direct economic loss or injury to the employer but to the tenant and thus would not be an event subject to the act. The committee report makes it clear that such theft would be covered, thus making it possible to avoid such an unintended anomaly.

The Department has concluded, after review of the legislative history, that the economic losses or injuries can be categorized into two classes—those incidents resulting in (1) direct or (2) indirect economic harm to the employer's business. The indirect losses or injuries can be subdivided into (1) unlawful acts resulting in loss of or damage to property for which the employer is responsible, and (2) unlawful activities causing indirect harm to the employer because of the use of the employer's business operations to conduct the criminal acts.

Congressional sponsors of the security services exemption (Congresswomen Roukema and Senator Nickles) urged a construction of the term "economic loss or injury to the employer's business" which would permit the testing of current employees by security service

employers when such employees are reasonably suspected of being involved in specific incidents that arise at the premises of security clients, e.g., a theft of money at a client's bank. This position was also advanced by the Committee of National Security Companies, the Independent Armored Car Operators Association, the National Armored Car Association, the National Burglar and Fire Alarm Association, and the American Polygraph Association.

Both Congresswomen Roukema and Senator Nickles noted in their comments that the House version of the legislation permitted security service employers to conduct testing of current employees in connection with specific incidents that arose after employment. They stated further that because of an understanding that private security employees would be subject to testing under the ongoing investigation exemption contained in the Senate version, specific mention of current security employees in the security services exemption seemed superfluous and was dropped by the conferees when the two exemptions were merged into the final legislation.

The apartment building example used by Senator Hatch illustrates the first type of indirect loss or injury. This can be described as theft from or harm to property managed or protected by an employer, but not belonging to the employer itself. This is also analogous to the security service situation of concern to commenters. The legislative history indicates that the economic losses or injuries can be indirect such as theft from or harm to property managed or protected by an employer, but not belonging to the employer itself.

An example of the second type of indirect economic injury is the use of an employer's property in illegal drug smuggling. As suggested by commenters, such as the Association of Floral Importers of Florida, smuggling or facilitating the import of illegal substances via an employer's airplanes or other property is comparable to the regulatory example of "money laundering" since the employer is similarly exposed to civil and criminal penalties such as damages, fines, and forfeiture. On the other hand, employee use or sale of drugs in the rest room or parking lot would not be considered use of the employer's business operations.

Section 801.12(c)(1) has been revised to clarify that theft or injury to property for which the employer exercises responsibility, for instance, the theft of property protected by a security service employer, is considered an economic loss or injury to that employer.

Section 801.12(c)(1) has also been revised to add that the use of an employer's business operations to commit a crime or offense, such as using the employer's warehouse or airplane for illegal drug smuggling, is an activity that constitutes an economic loss or injury to the employer's business under the ongoing investigation exemption.

The final rule provides that the "economic loss or injury" requirement does not include potential or threatened business losses as suggested by certain commenters (Association of Messenger Services, Inc. and Telcom Marketing, Inc.). It is clear from the legislative history that the term refers to demonstrable losses that have occurred in contrast to potential or threatened losses that might occur because of a client/customer's dissatisfaction with the conduct of an employee, i.e., a client/customer threatens to cease doing business if alleged employee misconduct like harassment, deception, or theft from an employee of the client/customer is not resolved by the service provider. It is also clear that the purpose of the ongoing investigation exemption is not to determine whether an alleged incident in fact took place.

The final rule also does not incorporate comments made by the Association of Floral Importers of Florida and others seeking approval of testing of employees for the purpose of determining involvement in illegal drug importation resulting from the traffic between Florida and "high risk" countries in Central and South America. The "specific incident or activity" limitation in § 801.12(b) does not include ongoing investigations to determine whether suspected activity, i.e., drug trafficking, is taking place. Broadening the term "specific incident or activity" to allow testing for the purpose of determining whether employees are engaged in suspected drug trafficking would be akin to the fishing expeditions which the statute specifically prohibits. An industry-type exemption similar to that which was provided for security service employers or employers registered under the Controlled Substances Act as suggested by the comments of the florist industry would require legislation by Congress and cannot be adopted by regulation.

Economic Loss Resulting From Intentional Wrongdoing

The National Association of Chain Drug Stores, Inc. and Revco D.S., Inc. objected to the phrase in § 801.12(c)(2) that the economic loss must result from intentional wrongdoing. According to these commenters, the phrase imposes a burden not supported by statutory

language or legislative history. The conference report on the legislation noted that the examples of economic loss cited in the Act were illustrative and not exhaustive, but stated that certain losses such as "an unintentional economic loss stemming from a truck or workplace accident were not intended to serve as a pretext of polygraph testing". The "intentional wrongdoing" phrase was used to contrast the "unintentional" example cited in the legislative history. These comments have merit as the phrase may imply the need for employers to have knowledge that an act was intentionally committed, i.e., a state of mind, by the suspected employee before a test under the exemption can be administered. Section 801.12(c)(2) in the final rule has been modified accordingly to eliminate the "intentional wrongdoing" phrase and language more closely in line with that in the legislative history has been used.

Definition of Property

Revco D.S., Inc. suggested that the definition of "property" in § 801.12(e)(2) should also include trade secrets in that they have economic value. According to Black's Law Dictionary, a trade secret is a "plan or process, tool, mechanism, or compound known only to its owner and those of its employees to whom it is necessary to confide in." Trade secrets obviously have commercial value, and the addition of the term is consistent with the examples used to illustrate the meaning of the word "property." Accordingly, § 801.12(e)(2) has been modified to add trade secrets to the definition of property.

Definition of Reasonable Suspicion

The term "reasonable suspicion" is defined in § 801.12(f)(1) as "an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss" (emphasis added). This section also states that "access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for reasonable suspicion."

The American Polygraph Association commented that the regulatory definition of "reasonable suspicion" imposes a higher standard on the employer than that intended by Congress, which meant to follow the case of *Terry v. Ohio*, 392 U.S. 1 (1968). It was their position that this case only requires a police officer to have an "articulable basis" that the suspect may have been involved in a crime; and that the "reasonable suspicion" definition should require at most that the employer have an articulable basis that the

employee may have been, rather than was, involved in the incident under investigation. This view was essentially shared by the National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, Jewelers of America, Inc., United States League of Savings Institutions, Great Western Bank, and the Texas Security Service. These commenters argued that access of a limited number of employees to the lost property was the primary basis for suspecting misconduct, and that employers should be allowed to formulate a "reasonable suspicion" based on such access. For example, an employer should be allowed to polygraph four employees with comparable access to a safe since each may have been involved in the incident under investigation. The Great Western Bank observed that sole access by one employee ought to constitute a basis for "reasonable suspicion" when all other possible explanations for the loss have been ruled out.

The American Polygraph Association also urged adoption of a position that would allow polygraph results to form a basis for "reasonable suspicion" as to other employees or other investigations. For example, where two employees had access but the employer is able to articulate a basis for reasonable suspicion only as to one employee, and that employee passes a polygraph test, it is argued that there is a basis for "reasonable suspicion" as to the only other individual with access. It was their view, also, that the results of "paper and pencil" tests should be allowed to form a basis for "reasonable suspicion." For example, where the results of tests administered to ten employees with access to lost property indicate that four may have dishonest tendencies, then there is a basis for "reasonable suspicion" as to these four.

In support of § 801.12(f) as written, the Service Employees International Union urged the Department to set up a regular system for reviewing the written statements used to justify testing.

After careful review of the legislative history, the Department has concluded that Congress did not intend the statutory phrase "was involved" to be construed as "may have been involved," nor is such a construction required by the decision of the Supreme Court in *Terry v. Ohio* as suggested by the American Polygraph Association. The legislative history consistently uses the words "was involved in the incident." For example, the Conference Report uses the statutory words "was involved" and also stresses that the term "reasonable suspicion" refers to some

observable, articulable basis in fact beyond the predicate loss and access required for any testing." (H.R. Conf. Report 659, 100th Cong., 2nd Sess. 12 (1988) at page 13.)

Furthermore, the statute clearly imposes the conditions of (1) loss or injury, (2) access, and (3) reasonable suspicion that an employee was involved before polygraph testing is permissible under the ongoing investigation exemption. To allow employers to formulate "reasonable suspicion" based on access alone, without any other specific and articulable suspicion, would be inconsistent with this statutory scheme and the legislative history of EPPA. Likewise, there is no basis in the legislative history or in the case law for reaching a conclusion that reasonable inferences of involvement in incidents under investigation can be drawn from the results of polygraph or "pen and pencil" tests, as suggested by the American Polygraph Association, and serious questions have been raised about the reliability of such tests. There is merit, however, to the argument which was raised by the Great Western Bank with regard to the situation where one employee has sole access to the property. An inference of involvement in such circumstances seems reasonable and within the limitations of the exemption.

Accordingly, the suggested revisions to § 801.12(f) are not adopted except for the clarification that reasonable suspicion may be formulated on the basis of sole access by one employee. With respect to the comment of the Service Employees International Union, there is no authority under the statute for monitoring the extent to which tests under the ongoing investigation exemption are administered, nor does the Department have authority to require its notification whenever one might be administered. The required notices to examinees, of course, will be reviewed during the normal course of investigations.

Requirement That Reasonable Suspicion Be Described "In Detail"

Section 801.12(a)(4) of the interim final rule set forth the requirements for the statement which must be furnished to employees before testing under the ongoing investigation exemption. The American Polygraph Association (APA) questioned the use of the words "in detail" in § 801.12(a)(4)(iii), the portion of the statement concerning an employer's basis for reasonable suspicion. The APA contends that these words are not required by the statute and have caused confusion. They argue

further that the statute merely requires an employer to possess an "articulable" basis for reasonable suspicion, and suggested that the words "in detail" should be deleted.

The Act itself, in section 7(d)(4), requires the employer to execute a statement that "sets forth with particularity" the "specific incident" under investigation and "the basis for testing particular employees," and the statement must identify the "specific economic loss or injury." Section 7(d)(4)(D)(iii) expressly requires "a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation." The Conference Report on the legislation indicates that the statement must "explain" the basis of the employer's reasonable suspicion, and provides further that " * * * the term 'reasonable suspicion' refers to some observable, articulable basis in fact beyond the predicate loss and access required for any testing * * *"

When read in conjunction with its legislative history, this section of the Act clearly imposes the burden on the employer of having to "set forth with particularity * * * the basis for testing particular employees," which must include an explanation of the basis for the employer's reasonable suspicion that the employee to be tested was involved in the incident or activity being investigated. The "reasonable suspicion" must be some observable, articulable basis in fact. The words "describing in detail" were used in the regulations to make clear the Congressional intent that something more was required than a mere statement that the employee was suspected of having committed the incident under investigation (see § 801.12(g)(3)). They are synonymous with the words "articulable" and "with particularity" used in the statute and legislative history. Therefore, no changes will be made in this section as a result of the comments received.

Signature by An "Authorized Person"

Section 7(d)(4)(B) of EPPA requires the examinee statement under the ongoing investigation exemption to be signed by "a person (other than a polygraph examiner) authorized to legally bind the employer." The statutory phrase "(other than a polygraph examiner)" was not included in § 801.12(g)(4) of the interim final rule in connection with the signature required on the statement. With respect to this requirement, the American Polygraph Association noted that the regulation should make clear that only the polygraph examiner who

will administer a test is precluded from signing the statement since a polygraph examiner may also be an employer. Another commenter, Meridian Bancorp, Inc., suggested that a definition of the term "an authorized person" is needed to avoid confusion.

Section 801.12(g)(4) has been revised in the final rule to make clear that a polygraph examiner is not disqualified from signing the statement when acting in the capacity of an employer, provided the examiner does not also conduct the examination. With respect to the term "authorized person," language has been added indicating that the statement may be signed by the employer, or any employee or other representative of the employer with authority to obligate the employer under law.

III. Controlled Substances Exemption

"Direct Access" and "Access"

Section 7(f) of EPPA permits qualifying employers in the controlled substances industry to administer polygraph tests to: (1) Prospective employees who would have "direct access" to the manufacture, storage, distribution, or sale of controlled substances; and (2) current employees if in connection with an ongoing investigation of drug theft or drug diversion and the employee had "access" to the person or property under investigation. Three trade associations (the National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, and Food Marketing Institute), two drug store chains (Medicare-Glaser Corporation and Revco D.S., Inc.) and the American Polygraph Association commented on the definitions of "direct access" and "access" in the interim rules. The concerns of these commenters were essentially twofold: That the exclusion of job applicants in custodial and other maintenance positions from the types of positions considered to have "direct access" was too restrictive; and, that the exclusion of current employees without direct, occasional, or opportunistic chances to steal or divert controlled substances from the types of positions having "access" was contrary to the statute.

In the case of "direct access," the interim rule provided that a prospective employee may be polygraphed only if the position applied for has duties/responsibilities which include direct contact or an ability to affect the disposition of controlled substances, as opposed to those that may only have infrequent, random, or opportunistic access. According to the commenters,

the emphasis should be on proximity and accessibility rather than on direct contact or handling, i.e., any occupation with a reasonably foreseeable opportunity to cause or assist in causing the theft of controlled substances should be deemed to have "direct access." Such a broad interpretation would permit pre-employment polygraph screening of a janitor in a drug warehouse whose duties do not include handling controlled substances but do include cleaning areas in which drugs are secured and stored, a hospital security guard who guards an area in which drugs are stored, and virtually every other position except, possibly, a receptionist or other similar support staff in a "front office" location that is separate from the storage area. Pre-employment polygraph testing of such employees is not supported by the statutory language or legislative history, and no changes have been made along these lines.

With respect to the term "access," EPPA permits polygraph testing of a current employee provided the employee had "access" to the specific person or property which is the subject of an ongoing investigation. An example of a pharmacy department within a supermarket was used in the interim final rule in § 801.13(c)(2) to illustrate the distinction between "direct access" and "access." Several commenters disagreed with the example, specifically the statement that "[c]ertain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have 'access' of any type." These commenters argued that the meat clerk, for instance, could enter the pharmacy in violation of company policy, and that polygraphing of the meat clerk should be permissible if an ongoing investigation revealed such "access." The Department agrees with this observation, and, therefore, has clarified § 801.13(c)(2) to provide that any current employee, regardless of described job duties, may be polygraphed if the employer's ongoing investigation of criminal or other misconduct discloses actual "access" to the person or property that is the subject of the investigation.

Exclusion of Common/Contract Carriers and Public Warehouses

The controlled substances exemption applies only to employers registered under the Controlled Substances Act. The preamble to the interim rule invited public comment on the matter. Other than a comment from the American

Polygraph Association supporting the interpretation in the interim final rule, no other comments were received. Accordingly, the statutory interpretation contained in the interim final rule is adopted in the final rule.

Scope of An Ongoing Investigation Under the Controlled Substances Exemption

A drug store chain, Revco D.S., Inc., and related trade associations, National Association of Chain Drug Stores, Inc., and National Wholesale Druggists' Association, argued that the cross reference to § 801.12(b) in § 801.13(f)(1) incorrectly attempts to incorporate the conditions of the section 7(d) exemption for ongoing investigations in the section 7(f) exemption for controlled substances. According to these commenters, the mere existence of an inventory shortage should be sufficient to allow use of polygraph tests under the "potentially involving" language of section 7(f).

The American Pharmaceutical Association, on the other hand, urged a position that precludes mere inventory shortages as a basis for testing under the controlled substances exemption.

With regard to current employees, the controlled substances exemption differs from the ongoing investigation exemption in several important respects. Congress did not impose the "reasonable suspicion" condition on employers registered under the Controlled Substances Act, and also excluded the requirement for a statement to be given to the examinee which details the specific incident that is the subject of investigation, the examinee's access, and the employer's basis for reasonable suspicion. In addition, testing not only includes situations involving specific drug losses but was extended to even cover potential drug losses. Thus, where there is evidence of criminal or other misconduct, such as a tip that employees are planning to steal drugs, a drug store employer is permitted to polygraph all employees who have access to drugs.

The distinction between the two exemptions tends to be blurred by the cross reference to § 801.12(b). For these reasons, § 801.13(f)(1) has been revised to eliminate the cross reference, and to clarify the scope of the term "potentially involving."

IV. Security Services Exemption

Definition of "Primary Business Purpose"

The exemption in section 7(e) of EPPA for security services permits polygraph tests of certain prospective employees of

"* * * any private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel," and whose function includes protection of specified facilities or assets. Section 801.14(c) of the regulations defines the term "primary business purpose" to mean that 50% or more of the employer's business receipts must be derived from providing the types of security services enumerated in the Act. Thus, a company that is not primarily engaged in providing the named security services to others but which employs its own security personnel would not qualify for the exemption.

Fisher and Phillips, Law Offices, on behalf of an air cargo employer, suggested that the regulations be refined to clearly specify the entity to which the 50% test would be applied in cases of subsidiary corporations. To avoid confusion in this regard, § 801.14(c) of the final rule has been revised to clarify that where a parent corporation includes a subsidiary corporation engaged in providing security services, the business receipts test is applied to the subsidiary corporation, not the parent corporation.

Security Systems Other Than Security Alarm Systems

Two commenters (DeWalch Technologies, Inc., and Associated Locksmiths of America) suggested that the definition of the term "security alarm systems" in § 801.14(c) should provide sufficient flexibility so as to allow for additional types of security devices, such as mechanical or electronic locking systems, to qualify for exemption. The statutory exemption for security services refers specifically to employers whose primary business purpose consists of providing "* * * personnel engaged in the design, installation, and maintenance of security alarm systems," as well as armored car personnel or other uniformed or plainclothes security personnel. While code/card/key electronic locking devices can be as sophisticated as electronic alarm systems, nothing in the Act or legislative history suggests that Congress intended that the exemption be broadened to include additional devices or systems beyond those identified in the statute. Accordingly, the final rule does not expand the security alarm definition to encompass locking-type systems as suggested by the comments.

The Definition of Facilities, Materials, or Operations

The American Polygraph Association generally concurred in the definition of facilities, materials, and operations as listed in the interim final rule. Six other commenters, three of which represented major security service constituencies, suggested changes. The statement in § 801.14(d)(2)(ii)(A) pertaining to commercial and industrial assets and operations which "are designated in writing by an appropriate Federal agency to be vital to national security interests" was of particular concern. Commenters suggested that employers would not know who is an "authorized public official" or what is an "appropriate government agency." Initially, this phrase was intended to link facilities, materials and operations to the Department of Defense (DOD) Key Assets Protection Program, which designates "assets" affecting emergency mobilization. While DOD does publish a list of so called key assets, we understand that the list is classified and unavailable to the general public. The requirement is, thus, unworkable for purposes of defining the scope of the exemption. The suggestion from one commenter that a "simpler approach would be to allow testing of prospective employees who are engaged in guarding government facilities or who guard private facilities pursuant to a requirement by a government agency that such facilities be guarded" has merit, and the regulation is modified accordingly.

The legislative history makes clear that the facilities, materials, or operations must be high priority security functions and not low priority security functions. While the inclusion of all retail establishments in the list of facilities, as suggested by one commenter, does not meet this test, there is merit in the argument that large shopping centers, such as enclosed malls, are indistinguishable from other large public events. Accordingly, a new paragraph (viii) has been added to § 801.12(d)(2) which includes such facilities within the scope of the exemption. Among other minor clarifications, examples of commercial and industrial assets and operations in § 801.14(d)(2)(ii) have been expanded to include facilities and operations protected pursuant to security requirements under the Controlled Substances Act.

Scope of the Security Services Exemption

The exemption for certain prospective employees of armored car, security

alarm, and security guard employers whose function includes protection of:

(1) Facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision, or the national security of the United States including electric or nuclear power facilities, public water supplies, shipment or storage of radioactive or toxic wastes, and public transportation (section 7(e)(1)(A) of the Act); or

(2) Currency, negotiable securities, precious commodities or instruments, or proprietary information (section 7(e)(1)(B) of the Act).

The "assets" listed in item 2 above are defined in the interim final regulations as an array of " * * * assets handled by financial institutions such as banks, credit unions, savings and loan institutions, stock and commodity exchanges, brokers or security dealers * * * or * * * assets * * * typically handled by, protected for and transported between and among commercial and financial institutions." Under this interpretation of section 7(e)(1)(B), armored car employers would clearly be within the scope of the exemption as would employers providing security alarm or security guard services to financial institutions. Specifically excluded from the scope of the exemption would be security alarm or security guard services " * * * provided to private homes, or to businesses not primarily engaged in handling, trading, transferring, or storing currency, negotiable securities, precious commodities or instruments, or proprietary information." Because the legislative history is confusing and conflicting as to the scope of the exemption, the preamble to the interim final rule specifically invited comments on this issue.

Commenters objecting to the interpretation of section 7(e)(1)(B) included the Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, American Polygraph Association, and National Retail Merchants Association. Sen. Don Nickles and Rep. Marge Roukema (chief sponsors of the exemption), and Rep. Don Sundquist also commented. Sen. Nickles expressed concern over " * * * the extremely narrow scope of the exemption which the regulations have imposed, especially with respect to the list of assets covered by section 7(e)(1)(B) of the Act." According to Rep. Roukema, "Comments in the record make it clear that we intended to extend

the exemption's coverage to any security company whose functions include the protection of the assets listed in section 7(e)(1)(B), regardless of where they are found." Commenters expressed particular concerns regarding the Department's conclusion that protection of private homes was not within the scope of the exemption. The Service Employees International Union, conversely, supported the interpretation in the interim final regulation arguing that there was no "basis in the authorizing legislation" for broadening the exemption to include security personnel servicing private homes or businesses even though such establishments may house such assets.

A review of the legislative history reveals seemingly ambiguous and, at times, contradictory intent. On the one hand, sponsors of the amendment and others making floor statements during the debate make it clear that the exemption was narrowly crafted and intended to be limited to high priority security functions and large amounts of valuable assets. On the other hand, Sen. Nickles, who introduced the amendment in the Senate, was clearly of the view that the exemption extended to protection of private homes. The conference report on H.R. 1212 merely states that "employers engaged in providing certain security services are not prohibited from using polygraphs * * *" (H.R. Conf. Rep. No. 659, 100th Cong., 2d Sess. 13 (1988)).

After careful consideration of the statutory language, legislative history, and comments on this issue, the Department has concluded that the statute cannot be construed as broadly as the commenters suggest. Certainly the exemption cannot be construed to cover all security functions a company might perform, for there would then be no reason for the statute to be containing a limiting list of facilities and assets. Thus, the Department does not believe that the exemption was intended to extend to protection of every business or shop on the theory that all businesses handle cash. Store security systems are generally designed primarily to protect the property and inventory rather than cash, which is normally not maintained in large quantities on the premises. Similarly, if the exemption is read to include the guard or security system protecting an entire business establishment, which happens to have in its files ordinary company and financial records or customer lists, that is, information that every business maintains and that is not normally subject to special protection, the exemption would cover every security

service providing protection for any business that keeps company records on their premises. Such a broad construction would render the narrow language of the exemption meaningless. Nor is the language of the exemption easily susceptible to an interpretation which includes security services to private homes, which would be unlikely to have more than incidental quantities of the listed items. Rather, security in private homes is generally afforded for personal security reasons and to protect property, as well as consumer goods such as electronic equipment and personal valuables, rather than to protect commodities. If Congress had meant the assets to be anything of value, then it would be superfluous to list separate categories.

On the other hand, there is no legislative history which directly supports limiting the scope of section 7(e)(1)(B) exclusively to armored car employers or employers providing security alarm or security guard services to financial institutions, as set forth in the interim final rule. It is difficult to reconcile such a restrictive interpretation with the language in the statute itself, which includes "precious commodities or instruments" and "proprietary information," defined by Rep. Roukema as "documents essential to the functioning of a business."

The Department has therefore revised § 801.14(e) in the final rule to include protective services for casinos, racetracks, lotteries, or other business activities where large amounts of cash are acquired from or dispensed to customers, i.e., the cash in effect constitutes the inventory or stock in trade. Businesses engaged in the sale or exchange of precious commodities such as gold, silver, or diamonds, including jewelry stores or other stores that stock such precious commodities, prior to transformation into pieces of jewelry, silverware, or other items, have also been included. The term "proprietary information" has been limited to business assets (such as trade secrets, manufacturing processes, research and development data, cost/pricing data) which are subject to specially designed protection, i.e., a security system specifically designed to protect the proprietary information. Also, this specifically designed protection test in the final rule applies to any of the listed "assets" regardless of location, including businesses and residences. For example, a security alarm company that installs a security system expressly designed to protect diamonds kept in a home vault of a diamond merchant would qualify for the exemption. The

final rule broadens the scope of the exemption from the interim final rule, but does not provide a blanket exemption. The Department believes the final rule is consistent with the language and structure of the statute and the weight of the legislative history.

"Prospective Employee"

The exemptions in sections 7(e) and 7(f) of EPPA allow qualifying employers in the security services and controlled substances industries to administer polygraph tests to certain "prospective employees." The interim final regulations in § 801.14(b)(2) generally define the term "prospective employee" as an individual who is being considered for employment for the first time by an employer. However, §§ 801.13(d) (controlled substances exemption) and 801.14(b)(2) (security services exemption) allow for testing current employees who were initially hired to perform duties which do not fall within the scope of the exemptions, i.e., are not subject to testing, if they have applied for and are under consideration for re-assignment or promotion to positions with duties that do fall within the scope of the exemption. Thus, for example, an office secretary being considered for a position in a secure area of a drug warehouse may be tested. Likewise, a security guard hired for a position at a supermarket may be tested if the guard is subsequently considered for transfer or promotion to a job at a nuclear power plant.

The preamble of the interim final regulations provided the rationale for this broad interpretation: "[S]ome latitude is necessary * * * so that current employees of an employer will not be unfairly disadvantaged, with respect to non-employees, in competition for positions which may be subject to the exemption." This interpretation resulted from concern expressed by industry representatives, who also maintained that consideration should be given to the logistical problems posed by having to fill positions on short notice, i.e., there may not be a sufficient number of examiners and places available to test new applicants. They argued that pre-employment testing should therefore be permitted for a reasonable period after an applicant is initially hired. While this latter position was not adopted in the interim final rule, the preamble did invite specific comment on the issue.

Among the commenters endorsing the interpretation allowing testing of a current employee under consideration for reassignment or promotion were the Committee of National Security Companies, Independent Armored Car

Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, National Association of Chain Drug Stores, Inc., National Wholesale Druggist's Association, Food Marketing Institute, and the American Polygraph Association. Most of these commenters also urged that the Department allow testing subsequent to initial hiring, and suggested a time period in which to conduct such testing ranging from 14 days, to any time during a six-month probationary period.

The American Pharmaceutical Association, New Jersey Pharmaceutical Association, and an individual commenter argued that the term "prospective employee" should be strictly construed to mean a person who has not yet been hired.

There is no legislative history that directly addresses how Congress intended the term "prospective employee" to be interpreted. Based on the floor discussion of the legislation, it appears clear that Congress meant to distinguish prospective employees from current employees of an employer. Because statements in the record use the term interchangeably with "pre-employment" and "job applicant," this strongly suggests that, to the extent Congress considered the matter, it had a more commonly understood meaning in mind, i.e., an individual who is not yet hired. Thus, the final rule does not adopt commenters' suggestions on expanding the term "prospective employee" to include workers recently hired. Allowing post-hire testing would be inconsistent with the plain meaning of the Act and its legislative history. On the other hand, the Department is of the view that it is reasonable to construe the term "prospective employee" to include a current employee with respect to the incumbent position, who is also a "job applicant" or "prospective employee" with respect to the new position being applied for.

"Employed to Protect"

The security service exemption permits qualifying employers to administer polygraph tests to prospective employees, but not to a prospective employee "who would not be employed to protect" certain named facilities, materials, operations, or assets. The types of prospective employees within the scope of this exemption were described in §§ 801.14(g) (1)-(6) of the interim final rule. In general, these sections applied the exemption to any employee to be hired for a position that entailed the opportunity to cause or participate in a

breach of security. The American Polygraph Association (APA) indicated that the statement in § 801.14(g)(6), that any employee whose access to secured areas is "occasional" would not qualify, is confusing and inconsistent with the explanation of the types of positions for which polygraph testing would be permitted. The APA argued that it is the knowledge and ability to compromise the security of protected operations that is the determinative factor in the exemption, and not the frequency of opportunities which may be available.

This position has merit. Section 801.14(g)(6) of the interim final rule described employees who "would not be employed to protect" and therefore would not be within the purview of the exemption, such as janitors and other support-type personnel, and was intended to make clear that such personnel were excluded from the scope of the exemption even if they had "occasional" access. However, the word "occasional" implies that frequency of opportunity to breach security is a factor in determining whether an employee would not be employed to protect the listed facilities or assets for purposes of the exemption. Accordingly, to eliminate this confusion, the section has been clarified and the term "occasional" has been deleted from § 801.14(g)(4)(ii) (formerly § 801.14(g)(6)) of the final rule.

Policy considerations and public comments suggest that additional flexibility is required in the regulations, given the realities of the workplace, with respect to the Department's interpretation of the statutory language "[t]he exemption * * * shall not apply if the test is administered to a prospective employee who would not be employed to protect facilities, materials, operations, or assets * * *". According to one commenter, the exemption encompasses all job applicants who would, on an occasional, intermittent, or rotating basis, protect "facilities, operations, materials, or assets" within the scope of the exemption. This interpretation would include those applicants whose assignment to such protective duties during the course of their employment is possible but not certain.

There is no relevant legislative history bearing directly on this aspect of the exemption. The language of the statutory exemption states that it does not apply "to a prospective employee who would not be employed to protect" the named facilities, etc. The regulatory language in § 801.14(g) incorrectly construed the exemption to apply only to job applicants who "would be"

employed to protect the security of qualifying facilities.

On review of this issue, the Department has concluded that, based on the plain meaning of the statutory language, the exemption should not be restricted to those persons hired specifically to protect the listed facilities or assets. On the other hand, to apply the exemption to any employee for whom there is a possibility, no matter how remote, that at some point in the course of employment the employee might protect a listed facility would render the restriction virtually meaningless. The Department has concluded that the exemption should apply to any applicant who would be likely at some time to protect covered "facilities, operations, materials, or assets," such as through rotation of work assignments or through selection from a pool of available employees, even if selection for such work is unpredictable or infrequent. Under this interpretation, the exemption would not permit the testing of prospective employees who would be unlikely to ever perform these protective functions or those who have only a remote possibility of performing the exempt work on an emergency basis. This clarification will address concerns expressed by the security industry of special logistical problems associated with the need for rapid placement of personnel in positions within the scope of the exemption, since pools of current employees already polygraphed would be available for reassignment on short notice.

Section 801.14(g) has been revised in accordance with the above discussion, to clarify the intent of the phrase "would not be employed to protect" exempt facilities.

V. Restrictions/Recordkeeping and Other Procedural Matters

Definition of Reasonable Written Notice

A number of commenters including the Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, Food Marketing Institute, and National Retail Merchants Association generally objected to the requirements in §§ 801.12(g)(2) and 801.22(c)(1)(i)(A) that the specified reasonable written notice be given "at least 48 hours" prior to testing. They argued that the 48-hour timeframe was too rigid and that more flexibility was needed. This position was also taken by

several drug store chains (e.g., Medicare-Glaser Corporation and Revco D.S., Inc.) and several polygraph examiners. Certain of these commenters stated that a 48-hour notice served little purpose in the case of pre-employment testing in that it delayed the hiring process to the detriment of job applicants, and complicated hiring during times of unpredictable/emergency staffing demands. With respect to current employment testing, some commenters argued that testing on a more immediate basis was necessary in certain situations, e.g., there is little likelihood that an armored car driver responsible for custody of \$1,000,000 cash found missing would report for a polygraph test 48 hours after the funds were lost. In this connection, commenters involved with controlled substances urged that they either be excluded from the requirement, or, in the alternative, be allowed to test immediately upon notification to the Drug Enforcement Agency (DEA) of a theft or loss.

The 48-hour requirement was regarded as reasonable by the American Polygraph Association, United States League of Savings Institutions, and the National Training Center of Polygraph Science. The American Pharmaceutical Association, the New Jersey Pharmaceutical Association, and the Service Employees International Union, however, urged additional notice time ranging from 72 hours to 96 hours. These commenters noted that employees do not typically have ongoing relationships with attorneys, and that additional time was needed for employees to verify employer compliance with statutory provisions.

Section 8(b)(2)(A) of the Act requires that individuals must be given "reasonable written notice" of the date, time, location and other information about a polygraph test. The reasonable notice requirement has application to both preemployment testing as allowed by the security services and controlled substances exemptions, and current employment testing as allowed by the ongoing investigation and controlled substances exemptions. There is no specific legislative history on what the Congress intended by the word "reasonable."

A minimum timeframe of 48 hours was adopted in the interim final rules in both §§ 801.12(g)(2) and 801.22(c)(1)(i)(A) based on the rationale that at least this amount of time was needed by prospective examinees to seek out counsel, consult, and determine whether or not to proceed with the planned test.

Upon weighing the various alternatives, including allowing employees or prospective employees a waiver option, it was concluded that the 48-hour time period was, in general, consistent with the statutory requirement for "reasonable written notice" and the broad legislative purpose of subjecting permitted polygraph testing to strict conditions/restrictions, including the requirement of an informed examinee. The argument that a rigid 48-hour waiting period may not accommodate job applicants whose interest often is in starting work as soon as possible and employers who are often faced with unpredictable staffing demands, however, has merit, while an absolute waiver of the 48-hour time period would nullify the statutory requirement of reasonable notice, it is believed that a 24-hour time period, if freely agreed to by the prospective employee and not a condition of employment, balances the statutory mandate with the interests of prospective employees and employers. Section 801.23(a)(1) (formerly § 801.22(c)(1)(i)(A)) is accordingly modified to allow prospective employees the option of voluntarily waiving the 48-hour time period and to proceed to a test 24 hours after receipt of the required written notice.

Several commenters noted that the "weekend days and holidays" exclusion specified in § 801.22(c)(1)(i)(A) of the interim rule was omitted from Section 801.12(g)(2) which also provides that the written notice required therein must be received by an examinee at least 48 hours before the time of the test. Section 801.12(g)(2) has been modified to correct this omission. During the course of enforcement experience under the Act, it was observed that a determination of whether or not the notice was received by the examinee 48 hours prior to the test was impossible without some documentation of the time and date of statement receipt by the employee. While some employers provided such documentation in conjunction with the notice, others did not. It is accordingly considered necessary to require such documentation and §§ 801.12(g)(2) and 801.23(a)(1) have been modified to provide for employee verification of the time and date of receipt of the notice.

Basis for Adverse Employment Actions Under Ongoing Investigation, Security Services, and Controlled Substances Exemptions.

Section 8(a)(1) of EPPA provides that the ongoing investigation exemption shall not apply if an employer takes an adverse employment action, as identified in the Act, against an

employee on the basis of the results of a polygraph examination or the refusal to take such a test, "without additional supporting evidence." The "additional supporting evidence" may consist of the threshold evidence required for administering a polygraph test under this exemption.

Section 8(a)(2) of EPPA also specifies that the security service and controlled substance exemptions shall not apply if the polygraph test results or the refusal to take a polygraph test form "the sole basis" for the adverse employment action taken by the employer against an employee or prospective employee.

Section 801.20 of the interim final rule explains what may constitute the necessary additional supporting evidence, which, along with the polygraph test results or refusal to take the test, would justify an adverse employment action under the ongoing investigation exemption. Essentially, this additional supporting evidence can be the threshold evidence required for administering a polygraph test under the exemption, that is, the evidence leading to the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation and evidence indicating that the employee had access to the employer's property that is the subject of the investigation. Any admissions or statements made by the examinee during the polygraph test may also constitute additional supporting evidence for purposes of an adverse employment action, as provided in section 8(b)(2)(D)(ii) of EPPA.

Section 801.21 discusses other legitimate reasons that, in conjunction with the analysis of a polygraph test chart or the refusal to take the test, may be used as the basis for an adverse employment action under the security service and controlled substance exemptions. Bona fide reasons, such as prior job performance, education or work experience, as well as admissions by the employee, may serve as additional bases for employment decisions.

Sections 801.22(c)(1)(i)(C)(3) (ii) and (iii)(A) of the interim final rule provided that the written notice that must be supplied to the examinee prior to the administration of the test must contain information:

(ii) That the employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test or based on the employee's refusal to take such a test, without additional evidence which would support such action;

(iii) (A) In connection with an ongoing investigation, that the additional evidence

required for the employer to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

Revco D.S., Inc., commented that the sole basis standard in section 8(a)(2) of the Act allows the employer to use the test results, or refusal to take the test, along with other factors. According to Revco, that standard is substantially different from the ongoing investigation standard, which requires additional supporting evidence. Consequently, Revco urged that § 801.22(c)(1)(i)(C)(3)(ii) (now § 801.23(a)(3)(x)) be changed to reflect the two distinct standards. Finally, Revco recommended that § 801.22(c)(1)(i)(C)(3)(iii)(A) (now § 801.23(a)(3)(xi)(A)) be limited to the ongoing investigation exemption under section 7(d) of the Act because the employer using the controlled substance exemption under section 7(f) of the Act need not have reasonable suspicion.

A review of the legislative history indicates that Congress considered the standards applicable to adverse actions under the security service and controlled substance exemption to be the same as those for the ongoing investigation exemption, except that the prerequisites for conducting a polygraph test under the ongoing investigation exemption may serve as the additional evidence. In the floor debates in the Senate, for example, the terms "sole basis" and "additional evidence" were used interchangeably, emphasizing that there must be additional evidence to warrant an adverse employment action so that the polygraph test is not the sole basis for the decision. Hence, the same standard exists for adverse actions under the private security and controlled substance exemptions as under the ongoing investigation exemption. It is evident from the Conference Report (H.R. Conf. Rep. No. 659) that the different statutory language arises from the merger of the Senate and House bills, rather than from application of a different standard.

Furthermore, although Revco's point is well taken that access and reasonable suspicion are not required for a polygraph test under the controlled substances exemption, it remains true that such evidence, if available, would constitute the requisite additional evidence.

The standards set forth in §§ 801.20 and 801.21 conform to the statutory

language and Congress' intent. Furthermore, § 801.22 (c)(1)(i)(C)(3)(ii) (now § 801.23 (a)(3)(x)), which requires written notice of examinee rights, although not precisely tracking the statutory language, is consistent with congressional intent. Accordingly, no changes are being made in these sections in the final rule in response to the comments received.

Restructuring/Re numbering § 801.22, "Rights of Examinee"

Section 801.22(a) through 801.22(c)(3) specifies the rights of employees under EPPA during each of the three phases of a polygraph test (pretest, actual testing, and post-test phases). The paragraph structure within this section includes some subsections requiring as many as seven levels of designation (e.g., see § 801.22 (c)(1)(i)(C)(3)(iii)(B)). The overly detailed subdivision within this section caused considerable confusion among many commenters who attempted, without success, to correctly cite particular provisions of this section. The Office of the Federal Register generally encourages agencies to avoid overly detailed subdivision by dividing complex sections into smaller, more compact sections. Therefore, § 801.22 has been divided into four separate sections (General, Pretest, Actual Test, and Post-test), and the sections have been renumbered accordingly. (In addition to the Table of Contents and appendix A, this involved revising cross-references throughout part 801.)

Degrading or Intrusive Questions

The National Association of Chain Drug Stores, Inc., National Wholesale Druggist's Association, and Food Marketing Institute objected to the prohibition against an examiner asking questions in a degrading or unnecessarily intrusive manner. The provision was characterized as subjective and unworkable. It was suggested that the prohibition refer instead to the specific lines of questioning that are barred by the statute, i.e., religious, political, racial, sexual, or union beliefs.

Section 8(b)(1)(B) of EPPA provides that the exemptions which permit employers in the private sector to administer polygraph tests shall not apply unless, throughout all phases of the test, the examinee is not asked questions in a manner designed to degrade, or needlessly intrude on, the examinee. In addition, section 8(b)(1)(C) of the Act separately provides that the examinee may not be asked any questions concerning: religious beliefs or affiliations; beliefs or opinions regarding racial matters; political beliefs or

affiliations; any matter relating to sexual behavior; and beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

The types of questions permitted and the limitation on the nature of the questioning are imposed specifically by the statute. Consequently, elimination of the prohibition in question, as suggested, is precluded by the statute, and no changes have been made in the final rule with respect to this prohibition.

Prohibition Against Polygraph Test Where There is Evidence of Certain Medical Conditions

The National Association of Chain Drug Stores, Inc., and Revco D.S., Inc., suggested that § 801.22(b)(2) (now § 801.22(b)(5)) of the interim final rule be revised to provide that persons who have direct access to controlled substances should not be allowed to present a physician's statement indicating they are being treated for drug addiction and, for that reason, refuse to take a polygraph test.

Section 8(b) of EPPA sets forth the rights of an examinee which must be observed in order for the exemptions that allow polygraph testing in the private sector to apply. Section 8(b)(1)(D) expressly requires that "the examiner * * * not conduct the test if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the actual testing phase." The purpose of this statutory provision is to account for abnormal responses due to physical or psychological conditions, and in the absence of any supporting legislative history, there is no basis for distinguishing employee drug use from other types of medical/psychological reasons that might contribute to such abnormal responses during a test. Therefore, no changes have been made in this section along the lines suggested by these commenters.

Notices Which Must Be Furnished to Examinees

Employers must provide to an employee or prospective employee certain written and/or oral notices prior to administering a polygraph test pursuant to an applicable exemption. The required notices, as set forth in the interim final regulations, are as follows:

(1) A written statement which explains the specific incident being investigated and the basis for testing particular employees under the ongoing investigation exemption (§ 801.12(a)(4)), which must be received by the employee

at least 48 hours prior to the examination (§ 801.12(g)(2));

(2) A written notice concerning the time and place of the exam and the examinee's right to consult with counsel (§ 801.23(a)(1), formerly § 801.22(c)(1)(i)(A)), which must be furnished to the examinee at least 48 hours prior to the examination;

(3) A written and oral notice concerning the nature and characteristics of the polygraph instrument (§ 801.23(a)(2), formerly § 801.22(c)(1)(i)(B)); and

(4) A written notice, which must be read to and signed by the examinee, setting forth legal rights and remedies of the examinee and of the employer (§ 801.23(a)(3), formerly § 801.22(c)(1)(i)(C)) with a suggested format provided in appendix A.

These notices generated considerable comment. For example, the National Association of Retail Dealers of America and the National Retail Merchants Association suggested that the notice requirements could be simplified by combining the four notices into two. They recommended that notices one and two above be combined into a single notice, that notices three and four above be combined into a single notice, and that suggested formats for each be provided by the regulations.

While each of the four separate notices identified above are required by statute, there is no reason why they cannot be combined by an employer. Because notices 1 and 2 above must be provided to the examinee 48 hours in advance of a test, combining them would make practical sense. Notice 1, however, relates only to cases of ongoing investigations, and combining it with notice 2 as a matter of course in all cases would not be appropriate. Moreover, both notices are very fact dependent and may contain varying amounts of information depending on the circumstances leading to the test. As a practical matter, notices 3 and 4 could also be consolidated or even combined with notices 1 and/or 2. Because of varying circumstances, and the need for employer flexibility, the Department has determined not to make regulatory changes that would either establish or mandate consolidation. However, any of these notices may be combined by an employer, provided that all the necessary information is supplied to the examinee and the required time limits are met.

Receipt of Written Notice.

One commenter noted that § 801.22(c)(1)(i)(A) of the interim final rule should be clarified as to whether

the written notice must actually be "received by" the examinee rather than "furnished to" the examinee 48 hours before the test. The statute itself uses the words "provided to the examinee" (section 7(d)(4)) and "the prospective examinee is provided with" (section 8(b)(2)(A)). The phrase "provided to", in our view, implies actual receipt.

Arguably, the language "furnished to" may be interpreted differently from "received by," since the former focuses on the employer/examiner's action and not on the employee's receipt of the notice. To avoid confusion, § 801.23(a)(1) (formerly § 801.22(c)(1)(i)(A)) is modified to specify "received by" in contrast to "furnished to."

Examinee's Right To Consult With Counsel.

Section 801.22(c)(1)(i)(A) of the interim final rule sets forth the statutory requirement that "an employee has the right to obtain and consult with legal counsel before each phase of the test." Because of the statement of Senator Hatch during Senate consideration of S. 1904 [134 Cong. Rec. S1646] and standard polygraph practice, this section also provides that "the attorney or representative may be excluded from the room where the examination is administered during the actual testing phase."

One commenter suggested that "the right to consult with counsel" needed clarification and posed various questions as follows: "May the attorney be present on the premises of the employer/examiner during the test?"; "may the attorney be excluded from the premises or immediate area of the test during all phases, pre-test and/or post test phases?"; "may the attorney object to the procedure or questions and how is the dispute to be resolved?"; and, finally, "may the employer and/or examiner have counsel present if the employee does?"

These questions for the most part are theoretical in nature. The Department understands that the only parties present during an examination are, as a matter of established polygraph practice, the examiner and the examinee. While some examining rooms are equipped with a two-way mirror, a camera, or a recorder, the statute requires that notification be given to the examinee when such devices are present. Elaboration beyond that currently provided is not considered necessary with one exception. Inherent in the right to counsel before each phase of the test is the provision of a convenient place on the premises of the employer or examiner where the examinee may consult privately with

his/her attorney. Otherwise, the right to consult becomes meaningless. Section 801.23(a)(1) (formerly 801.22(c)(1)(i)(A)) has been modified accordingly.

Requirement To Inform Examinee Both Orally and in Writing of the Nature and Characteristics of the Polygraph Instrument and Examination.

The Food Marketing Institute objected to the requirement in § 801.22(c)(1)(i)(B) (now 801.23(a)(2)) of the interim final rule that the examinee must be given oral as well as written notice of the nature and characteristics of the polygraph instrument and examination. The commenter suggested that a reading of such notice was unnecessary since an examinee had the opportunity to review the written notice with counsel or an employee representative. With respect to the polygraph instrument and its characteristics, it was suggested that employers be allowed to use the same words as contained in § 801.2, which defines the term "polygraph."

The definition of "polygraph" in § 801.2(e) satisfies the notice requirement for a description of the nature and characteristics of the polygraph instrument.

The notice itself is required by statute. However, the statutory language in section 8(b)(2)(B) requires only that the examinee be informed in writing. Nevertheless, the oral notice requirement is regarded as being fully consistent with the purposes and intent of the statute that prospective examinees be fully informed as to polygraph tests and their permissible uses. Therefore, no changes have been made in this requirement.

Requirement That the Examinee Be Provided a Written Notice Detailing, Among Other Things, the Legal Rights and Remedies of the Examinee and of the Employer, and the Suggested Format of Such Notice in Appendix A.

The notice required by § 801.22(c)(1)(i)(C) of the interim final rule and the related suggested format in appendix A were the subject of considerable comment. One polygraph examiner, Edward R. Kirby & Associates, Inc., indicated confusion on the timing of the notice and whether or not it must be presented 48 hours before the actual test. Three trade associations (Food Marketing Institute, National Association of Retail Dealers of America, and National Retail Merchants Association) and the National Training Center of Polygraph Science objected to the requirement that the notice must be read to, in addition to being signed by, the examinee. The National Association of Retail Dealers of America also

objected to the words "suggested format" and requested modification to make clear that use of Appendix A provides a "safe harbor" for the employer. Finally, an attorney suggested that Appendix A should include reference to the examinee's right to consult with counsel before each phase of the test.

The requirement that the notice must be read to an examinee is statutory [section 8(b)(2)(D)] and the change suggested cannot be made. The other comments, however, have merit. Section 801.23(a)(3) (formerly § 801.22(c)(1)(i)(C)) has been revised to make clear that the notice may be presented to the examinee at any point prior to the testing phase. With respect to appendix A, the final rule has been revised to delete the words "suggested format" and make clear that use of its format, if properly completed, constitutes compliance with the contents of this notice requirement. Appendix A has been revised to include a reference to the examinee's right to consult with counsel.

Examinee Notification That Admissions May Be Reported To Law Enforcement Agencies

The American Polygraph Association (APA) questioned the requirement in § 801.22(c)(1)(i)(C)(3)(iii)(B) of the interim final rule that examinees must be informed in the pre-test notice that "any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency." It was argued that such a requirement was not imposed by controlling provisions in section 8(b)(2)(D) of EPPA.

Among other things, paragraph (v) of section 8(b)(2)(D) of EPPA states that the notice shall inform the examinee of the legal rights and remedies of the employer including the rights of the employer under section 9(c)(2) of the statute. Section 9(c)(2) specifically permits an employer to disclose test results to "a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct." Contrary to APA's assertion, the notice requirement is in accord with statutory provisions, and, therefore, no changes have been made in this requirement.

The Scope of an Employer's Liability in Private Civil Actions

The American Pharmaceutical Association noted that the language in the regulations which was intended to provide notice to examinees of their legal rights and remedies under the Act

did not precisely track the statute. Section 6(c)(1) of the Act provides that an employer who violates the Act is liable "for such legal or equitable relief as may be appropriate, including, *but not limited to*, employment, reinstatement, promotion, and the payment of lost wages and benefits." The emphasized text quoted above was omitted from section 801.22(c)(1)(i)(C)(5) of the interim final rule and Appendix A—Notice to Examinee. The text has been conformed to the statutory text in § 801.23(a)(3)(xiii) (formerly § 801.22(c)(1)(i)(C)(5)) and in Appendix A.

The Timeframe for Presenting Questions to an Examinee During the Pretest Phase

The examinee's right to review all questions before the actual test is set forth in § 801.22(c)(1)(i)(C)(2)(ii) and (c)(1)(ii) of the interim final rule. One commenter noted that these sections did not identify when questions needed to be presented to the examinee during the pretest phase. Public inquiries from other polygraph examiners have also indicated confusion on the timing of questions and whether or not they must be presented 48 hours before the actual test (the timeframe for the notice of the date and place of the examination in § 801.22(c)(1)(i)(A) of the interim final rule). Based on standard polygraph procedure, it is considered impossible to provide precise phrasing of the questions 48 hours before a test. During the pretest phase of a test, the person to be examined is ordinarily interviewed by the examiner. The questions to be asked during the examination are typically finalized after this interview. The questions are then reviewed with the examinee before the examination. Section 801.23(b) (formerly § 801.22(c)(1)(ii)) has been modified accordingly to make clear that the questions to be asked during a test can be presented in writing and reviewed with the examinee any time prior to the actual testing phase.

Requirement To Give Examinee All Questions in Writing Before the Polygraph Test

The National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, and Food Marketing Institute suggested that the regulations be clarified to address how an examiner is to proceed when an unanticipated line of inquiry develops during the test as a result of admissions or statements made by the examinee. It was suggested that the regulations specify that the examiner may interrupt the test, present the new questions in writing to the examinee, and then

proceed with the polygraph examination after the examinee has reviewed the new questions.

The questions asked during a typical examination are of two types: "relevant" questions, which pertain directly to the matter under investigation, and "technical" questions, which are used to establish a baseline against which responses relevant to the investigation may be evaluated. The suggestion is to allow an examiner to introduce a new line of so-called "relevant" questions during the course of an examination that pertain to areas of wrongdoing which may be outside the scope of the incident initially being investigated. This situation might arise, for example, when an examinee denies involvement in a theft of money from a safe which is the subject of a polygraph examination but admits to other incidents of wrongdoing about which the employer had no knowledge, such as a theft of inventory items or on-the-job drug use.

The regulations have been modified to make clear that an examiner, when an unanticipated line of inquiry develops during the test as a result of admissions or statements made by the examinee, may interrupt the test, and return to the pre-test phase to present new "relevant" questions in writing to the examinee, and then proceed with the polygraph examination after the examinee has reviewed the new questions. However, because under both the ongoing investigation exemption and the controlled substances exemption the testing of current employees is limited to an "ongoing investigation," the introduction of an unanticipated line of inquiry is permissible only to the extent that it involves the same loss or injury that was the subject of the initial ongoing investigation. Thus, allowing a redirected inquiry into possible areas of wrongdoing which are not related to the subject of the initial ongoing investigation as suggested would be contrary to the statute and cannot be adopted by regulation.

Requirement That Employer Interview Examinee on the Basis of Test Results Before Taking Adverse Employment Action

Sections 8(b)(4)(A) of the Act and § 801.22(c)(3)(i) of the interim final rules require an employer in the post-test phase to interview the examinee on the basis of the test results before any adverse employment action can be taken. A polygraph examiner noted that this requirement is particularly cumbersome in the case of tests administered to screen job applicants. This commenter suggested that the

interview should be at the option of job applicants. While the requirement does have the potential of inconveniencing both employers and job applicants, a waiver by the job applicant is precluded by the unambiguous words in the statute. Accordingly, the requirement in section § 801.25(a)(1) (formerly § 801.22(c)(3)(i)) to interview an examinee before taking an adverse employment action is retained in the final rule without change.

Requirement That Employer Furnish Copy of the "Corresponding Charted Responses" to Examinee Before Any Adverse Action Can Be Taken

Sections 8(b)(4)(B) (i) and (ii) of EPPA specify that before an employer can take any adverse employment action against an examinee, that employer must, in addition to interviewing the examinee on the test results, provide the examinee with: (1) A written copy of any opinion or conclusion rendered as a result of the test; and (2) a copy of the questions asked during the test along with the *corresponding charted responses*. The interim final rule did not explain this requirement and states that the employer must "give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses."

The American Polygraph Association (APA) and several other commenters indicated that the phrase "corresponding charted responses" has caused confusion. They questioned whether this requirement refers to the examinee's answers or, alternatively, the actual graphs, which, in turn, might mean the entire chart or only those portions that relate to the alleged deceptive responses? One commenter noted that because the polygraph instrument generates some 6 inches of chart per minute, Congress intended that the examinee receive only the examiner's written report, i.e., both opinions and conclusions, and the examinee's recorded responses to the subject questions in the examiner's report. It was APA's view that the phrase refers to the examiner's *written report* which describes the examinee's responses to the questions as "charted" by the instrument, rather than the charts themselves.

The plain meaning of the statute requires a different conclusion, however, as the phrase "corresponding *charted responses*" clearly means the corresponding physiological responses on the polygraph charts. It differs from the terminology "any opinion or

conclusion rendered as a result of the test." If Congress had intended to require that employers need only provide the questions and answers and the examiner's report to the examinee, then the statute could have used the phrase "and the responses thereto" rather than requiring "the corresponding charted responses." Moreover, the statute would not have differentiated between "opinions or conclusions" in paragraph (i) and "corresponding charted responses" in paragraph (ii).

While there is relatively little legislative history on the matter, the Senate Committee Report discussing S. 1904 provides some insight into what was meant by "corresponding charted responses." The Background and Need for Legislation portion of the report describes the history of the tests and states that "despite the popular percept' on that the machine is a 'lie-detecto. . . most experts agree that it is not. In addition to the *charted responses*, most examiners base their conclusions on the conduct of the examinee, the natural inclinations of the examiner, and on statements made during the examination." (S. Rep. No. 284, 100th Cong., 2nd Sess. 42 (1988) (emphasis added).) This report thus indicates that "charts" as used in the Senate legislation (language which was eventually used in EPPA) refers to the recorded physiological changes and is synonymous with "charted responses." Furthermore, the legislative history establishes Congress' skepticism regarding the reliability of polygraph examinations, and indicates an intention to provide the examinee with every possible means of protection from unfair discrimination that may occur from inaccurate or inconclusive polygraph tests. The Department has therefore concluded that Congress intended that an employee be provided with a copy of his/her responses, as recorded on the polygraph chart, corresponding to all of the questions asked during the examination—even if fifteen or more feet in length, prior to any adverse employment action.

For these reasons, § 801.25(a)(2) (formerly 801.22(c)(3)(ii)) of the final regulations has been revised to make it clear that the term "corresponding charted responses" refers to copies of the entire examination charts.

Examiners Bond

Section 8(c)(1)(B) of EPPA and section 801.23(b)(2) of the interim final rules require an examiner to maintain either a minimum of a \$50,000 bond or an equivalent amount of professional liability coverage.

Shortly after EPPA became effective, the Department received several telephone inquiries from polygraph examiners concerning the format, content, and other specifications related to the \$50,000 bond referred to in the law. However, none of the commenters responding to the interim final rules addressed this issue. This may be due in large part to the fact that many examiners have discontinued operations. Those private examiners remaining in business typically carry liability insurance, and this may also account for the lack of interest in the bond provision.

There is no specific legislative history pertaining to the matter of bonding. The House bill, H.R. 1212, contained no licensing standards or bonding requirement. These types of provisions were, however, contained in the Senate version. According to the remarks of Senator Hatch on S. 1904, provisions on qualifications of examiners, such as training and bonding, were based in large part on the recommendations of the American Polygraph Association. While the conference agreement eliminated a requirement for the Secretary of Labor to establish licensing standards, certain of the requirements for examiners were retained, which included the \$50,000 bond.

The Department has decided not to establish a uniform bond format with related administrative procedures and instructions in the text of the final rule. The lack of interest in bonds within the polygraph examiner community strongly suggests that the statutory alternative of professional liability insurance is preferred. The Department will, in the alternative, provide guidance to individual examiners who wish to obtain a \$50,000 bond in lieu of liability insurance.

Five-Test and 90-Minute Test Requirements

The Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, and several polygraph examiners raised concerns about the limit of five polygraph tests on any given day and the 90-minute length of tests. With respect to the 5-test requirement, there is apparent confusion in situations where (1) tests subject to the Act and tests outside the scope of the Act are administered by an examiner on the same day, and (2) only tests outside the scope of the Act are administered by an examiner on a given calendar day. One commenter also suggested that the 5-test requirement should not apply to pre-

employment polygraph tests where the applicant passes the test and is diagnosed as truthful.

These commenters considered the 90-minute requirement to be unrealistic and unreasonable, particularly in those cases where the objective of the test can be achieved in less time. It was suggested that the Department recognize that some tests may be completed in less than 90 minutes, and that the regulations permit an examinee to depart from the test in such cases without placing the examiner and the employer in technical violation. One commenter suggested that a less stringent time standard be permitted for pre-employment tests of job applicants who test truthful.

Section 8(b) of the Act sets forth the rights of an examinee which must be observed in order for the exemptions that allow polygraph testing to apply. Paragraph (5) of section 8(b) expressly states that an examiner " * * * shall not conduct and complete more than 5 polygraph tests on a calendar day on which the test is given, and shall not conduct any such test for less than a 90-minute duration." Based on the specific statutory language, it is considered reasonable to limit the 5-test requirement to calendar days in which a test or tests subject to the Act are given by an examiner and § 801.26(c)(2) (formerly § 801.23(c)(2)) is modified accordingly. Thus, on any given calendar day on which a test within the scope of the Act is administered, the examiner may not conduct more than a total of 5 tests, regardless of whether any of the remaining tests conducted that day were also subject to EPPA. There is, of course, no limit on tests on calendar days when all administered tests are outside the scope of the Act. The requirement that no testing period shall be less than 90 minutes in length is also construed as applying only to tests subject to the Act's provisions. The exemption provided in the interim final rule when an employee voluntarily terminates the test prior to the end of the 90-minute period is clarified to provide that such termination must be before the test is completed, and that in such event, no opinion may be rendered regarding the employee's truthfulness. Section 801.26(c)(3) (formerly § 801.23(c)(3)) has been modified to reflect this position. While a practical case can be made for a shorter timeframe in the case of job applicants found to be truthful, the statute provides no authority to prescribe less stringent requirements in the regulations.

Requirement That Records Be Kept for Three Years From Date of Test

Pedersen Enterprises, Inc., a polygraph examiner, questioned the requirement in § 801.30(a) for examiners to retain test records for three years when most State laws only require such records to be kept for periods of one to two years. The three-year requirement is imposed by statute (section 8(c)(2)(B) of EPPA) and the Department has no authority to reduce it to a shorter period. Thus, no changes have been made in the three-year retention requirement.

Examiner Records Pertaining to the Number of Tests Conducted Each Day

One commenter suggested that the recordkeeping requirements are confusing, particularly with regard to tests administered outside the scope of EPPA. The comment has merit. Examiners are required to maintain records of the number of examinations conducted each day "whether or not conducted pursuant to the Act." Since § 801.26(c)(2) (formerly § 801.23(c)(2)) has been modified to make clear that the five-test limit is not applicable in calendar days where all administered tests are outside the scope of the Act, daily records of the number of tests conducted are needed only for those days in which one or more EPPA covered tests are conducted. Section 801.30(a)(5) (formerly § 801.30(a)(4)) has been modified accordingly.

Disclosure of Information Obtained During a Polygraph Test to Personnel of the Employer

Section 9(b) of EPPA prohibits an examiner from disclosing information acquired from a polygraph test except to the (1) examinee or other person designated by the examinee; (2) the employer who requested the test; or (3) a court, governmental agency, arbitrator, or mediator pursuant to a court order. With respect to disclosure of information to an employer, the National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, and Food Marketing Institute noted that § 801.35 needs clarification in connection with the scope of company personnel covered by the word "employer." This concern stems from the fact that a "need to know" is not limited solely to the company official who requested the test.

In view of the apparent confusion, § 801.35 has been revised to make clear that test results may be disclosed to any management personnel of the employer where the disclosure of such information is relevant to the carrying out of their job responsibilities.

Disclosure of Polygraph Test Information

Section 9(b) of EPPA prohibits an examiner from disclosing information acquired from a polygraph test except to: (1) The examinee or other person designated by the examinee; (2) the employer who requested the test; or (3) a court, governmental agency, arbitrator, or mediator pursuant to a court order. Section 801.35 of the interim final regulations restates the statutory exceptions to the general disclosure prohibition, but permits examiners to disclose test results, without identifying information, to other examiners for consultation purposes (§ 801.35(c)).

This provision is based on a practice of examiners to have other examiners verify their conclusions and/or observations. Such disclosure is considered to be a part of the examination and it is considered to be in the best interest of the examinees that this practice continue.

The statutory restrictions on disclosure were a concern to the Polygraph Examiners Board of the State of Texas. Under the Texas Polygraph Examiners Act, this Board makes routine compliance inspections of licensed polygraph examiners and their records. Section 9 of EPPA prohibits the Board from reviewing polygraph records (charts, examinee's answers to relevant questions, examiner's opinions, reports, etc.) unless they receive written permission from an examinee or obtain an order from a court of competent jurisdiction. Thirty-two states have laws with provisions for licensing operators of polygraph devices, and most licensing laws are administered by a board or similar entity. However, States other than Texas did not comment. It is not clear to what extent these licensing bodies must review the work product of examiners to assure compliance with State law.

At the request of the Texas Polygraph Examiners Board, Congressman Bartlett (R., Texas) introduced H.R. 3451 in October 1989 to amend section 9(b) of EPPA for the purpose of allowing examiners to disclose test results to inspectors of State and local governments in connection with "licensing and disciplining." However, Congress has not enacted this proposed amendment to the law.

Established case law indicates that the plain meaning of the statute must be followed unless it would cause an odd result or conflict with clearly expressed Congressional intent. The Department is of the view that the language of the statute prevents the Texas Polygraph Examiners Board or any other State and

local government agency from inspecting the polygraph tests conducted by an examiner. In the absence of any legislative history suggesting a contrary view, a regulatory change to permit disclosures of the type sought by the Texas Polygraph Examiners Board would not be legally supportable. An amendment to EPPA would be the only possible means to allow such disclosures. Accordingly, § 801.35 is adopted in the final rule without change on this issue.

Administrative Proceedings

The Office of Administrative Law Judges (OALJ), U.S. Department of Labor, commented on the procedural rules concerning the assessment of civil money penalties under the Act. The OALJ suggested that the regulations be clarified to provide that decisions of an Administrative Law Judge (ALJ) are reviewed by the Secretary in the exercise of the Secretary's discretion, rather than review as a matter of right. They also suggested that § 801.69 be clarified to provide that any Notice of Intent to vacate or modify the decision must be issued within 30 days of the date of the decision.

The Department concurs with these comments and has made modifications accordingly to § 801.70 of the regulations. In addition, the Department agrees with the suggestion of the OALJ that the regulations contain a standard of review by the Secretary of findings of fact made by the ALJ. Section 801.68 has therefore been revised to provide that findings of fact may be modified or vacated only if clearly erroneous.

In addition, the Department has modified section 801.59 to provide that where service of a request for a hearing is made by mail, five days will be added to the time in which the request must be received by the Administrator. This corresponds to a recent revision in the regulations under the Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. 1853, (the model for assessment of penalties under EPPA, as prescribed in section 6(a)(3) of the Act).

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 enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

The Department's determination that the regulation is not subject to a regulatory impact analysis is based on the following:

(a) The Congressional Budget Office estimated the cost for EPPA to be \$1 million to the Federal Government and that EPPA will have no impact on State and local governments.

(b) Further, the legislative history on EPPA shows a lack of any evidence that internal theft rates are higher in States which prohibit the use of polygraph tests. Also, there are no conclusive studies which show that polygraph testing reduces employee crime.

(c) Section 7 of EPPA permits certain employers to continue to conduct polygraph testing and permits all employers to request an employee to take a test, under certain conditions, when it is administered as part of an ongoing investigation. Consequently, any economic costs due to increased theft attributable to the absence of polygraph testing will be minimized.

(d) The net employment effect of EPPA will not be significant. As employers turn to different hiring procedures and screening techniques, employment gains in the occupations associated with these alternative hiring procedures will offset any employment loss in the polygraph testing field.

Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency Is Being Considered

On June 27, 1988 the Employee Polygraph Protection Act of 1988 was enacted. This Act, effective December 27, 1988, generally prohibits employers who are engaged in or affecting interstate commerce from using any lie detector tests, with certain exemptions, either for pre-employment screening or during the course of employment. Section 5 of the Act requires the Secretary of Labor to promulgate rules and regulations as necessary to implement the Act.

(2) Objectives of and Legal Basis for Rule

These rules are issued pursuant to section 5 of the Employee Polygraph Protection Act of 1988. The objective of the rules is to enable employers and polygraph examiners to comply with the requirements of the Act, and to advise

employees and job applicants of the provisions of the Act.

(3) Number of Small Entities Covered Under Rule

All private sector employers engaged in or affecting commerce or in the production of goods for commerce are subject to this final rule. Because of the term "affecting commerce," the scope of EPPA is accorded a broader meaning than that provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). Virtually all employers are covered by these regulations, and the majority of such employers would be classified as small entities. In addition, these regulations contain provisions applying to over 3,500 polygraph examiners and an undetermined number of others who administer lie detector-type tests, most of which are prohibited by the Act. It is estimated that nearly all of these examiners are either individual practitioners or associated with firms that would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The final rule contains recordkeeping requirements for employers with respect to the maintenance and preservation of records for each polygraph test administered, as well as for each polygraph examiner who administers such tests on behalf of employers.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements, nor is similar information required by any other Federal agency or statute.

(6) Differing Compliance and Recordkeeping Requirements

The language set forth in this final regulation closely adheres to the requirements imposed by the language of the Act and accompanying legislative history. The burdens imposed by these requirements on employers, and the polygraph examiners used by employers, are those imposed by statute, and those necessary to enforce the statute.

However, in developing this final rule, consideration was given to requiring a standard form for written statements which employers must provide to examinees, in certain instances, as a condition for administering polygraph tests under the several exemptions to the Act's general prohibition against

using such tests. For example, an employer is required to furnish an employee with a written statement setting out the employee's rights under the law, prior to administering a polygraph test. It was concluded that employers, especially small entities, should have the flexibility to formulate and maintain such required written statements in any order or form deemed most appropriate to their needs, and that standard formats would not be required. However, to assist such employers, a sample format is set forth in the Appendix to this part, which may be relied upon as meeting the content requirements for such notice.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the recordkeeping requirements in this final rule are those imposed by statute, and those necessary to determine compliance with the Act. Employers are permitted to use any format that meets enforcement and compliance needs.

(8) Use of Other Standards

Appropriate alternative standards that would impose fewer regulatory burdens on covered employers, especially small entities, are not available.

(9) Exemption of Small Entities From Coverage of the Rule

An exemption from the requirements of the final rule for small entities is not permitted by the provisions of the 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 Part 801

Employment, Investigations, Labor, Law enforcement.

Accordingly, title 29, chapter V, subchapter C, part 801 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, DC, on this 25th 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.

Subchapter C—Other Laws

Part 801—Application of the Employee Polygraph Protection Act of 1988

Subpart A—General

Sec.

- 801.1 Purpose and scope.
- 801.2 Definitions.
- 801.3 Coverage.
- 801.4 Prohibitions on lie detector use.
- 801.5 Effect on other laws or agreements.
- 801.6 Notice of protection.
- 801.7 Authority of the Secretary.
- 801.8 Employment relationship.

Subpart B—Exemptions

- 801.10 Exclusion for public sector employers.
- 801.11 Exemption for national defense and security.
- 801.12 Exemption for employers conducting investigations of economic loss or injury.
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Subpart C—Restrictions on Polygraph Usage Under Exemptions

- 801.20 Adverse employment action under ongoing investigation exemption.
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- 801.22 Rights of examinee—general.
- 801.23 Rights of examinee—pretest phase.
- 801.24 Rights of examinee—actual testing phase.
- 801.25 Rights of examinee—post-test phase.
- 801.26 Qualifications of and requirements for examiners.

Subpart D—Recordkeeping and Disclosure Requirements

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- 801.35 Disclosure of test information.

Subpart E—Enforcement

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- 801.41 Representation of the Secretary.
- 801.42 Civil money penalties—assessment.
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Subpart F—Administrative Proceedings

General

- 801.50 Applicability of procedures and rules.

Procedures Relating to Hearing

- 801.51 Written notice of determination required.
- 801.52 Contents of notice.
- 801.53 Request for hearing.

Rules of Practice

- 801.58 General.
- 801.59 Service and computation of time.
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- 801.63 Referral to Administrative Law Judge.
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Procedures Before Administrative Law Judge

- 801.65 Appearances; representation of the Department of Labor.
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- 801.67 Decision and Order of Administrative Law Judge

Modification or Vacation of Decision and Order of Administrative Law Judge

- 801.68 Authority of the Secretary.
- 801.69 Procedures for initiating review.
- 801.70 Implementation by the Secretary.
- 801.71 Filing and service.
- 801.72 Responsibility of the Office of Administrative Law Judges.
- 801.73 Final decision of the Secretary.

Record

- 801.74 Retention of official record.
- 801.75 Certification of official record.

Appendix A to Part 801—Notice to Examinee

Authority: Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009.

Subpart A—General

§ 801.1 Purpose and scope.

(a) Effective December 27, 1988, the Employee Polygraph Protection Act of 1988 (EPPA or the Act) prohibits most private employers (Federal, State, and local government employers are exempted from the Act) from using any lie detector tests either for pre-employment screening or during the course of employment. Polygraph tests, but no other types of lie detector tests, are permitted under limited circumstances subject to certain restrictions. The purpose of this part is to set forth the regulations to carry out the provisions of EPPA.

(b) The regulations in this part are divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use and the posting of notices. Subpart A also sets forth interpretations regarding the effect of section 10 of the Act on other laws or collective bargaining agreements. Subpart B sets forth rules regarding the statutory exemptions from application of the Act. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the recordkeeping requirements and the rules on the disclosure of polygraph test information. Subpart E deals with the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 801.2 Definitions.

For purposes of this part:

(a) *Act* or *EPPA* means the Employee Polygraph Protection Act of 1988 (Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009).

(b) (1) The term *commerce* has the meaning provided in section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). As so defined, *commerce* means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(2) The term *State* means any of the fifty States and the District of Columbia and any Territory or possession of the United States.

(c) The term *employer* means any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an *employer* with respect to the examinees.

(d) (1) The term *lie detector* means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term *lie detector* does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of *lie detector* are written or oral tests commonly referred to as "honesty" or "paper and pencil" tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(e) The term *polygraph* means an instrument that—

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(f) The terms *manufacture*, *dispense*, *distribute*, and *deliver* have the meanings set forth in the Controlled Substances Act, 21 U.S.C. 812.

(g) The term *Secretary* means the

Secretary of Labor or authorized representative.

(h) *Employment Standards Administration* means the agency within the Department of Labor, which includes the Wage and Hour Division.

(i) *Wage and Hour Division* means the organizational unit in the Employment Standards Administration of the Department of Labor to which is assigned primary responsibility for enforcement and administration of the Act.

(j) *Administrator* means the Administrator of the Wage and Hour Division, or authorized representative.

§ 801.3 Coverage.

(a) The coverage of the Act extends to "any employer engaged in or affecting commerce or in the production of goods for commerce." (Section 3 of EPPA; 29 U.S.C. 2002.) In interpreting the phrase "affecting commerce" in other statutes, courts have found coverage to be coextensive with the full scope of the Congressional power to regulate commerce. See, for example, *Godwin v. Occupational Safety and Health Review Commission*, 540 F. 2d 1013, 1015 (9th Cir. 1976). Since most employers engage in one or more types of activities that would be regarded as "affecting commerce" under the principles established by a large body of court cases, virtually all employers are deemed subject to the provisions of the Act, unless otherwise exempt pursuant to section 7 (a), (b), or (c) of the Act and §§ 801.10 or 801.11 of this part.

(b) The Act also extends to all employees of covered employers regardless of the citizenship status, and to foreign corporations operating in the United States. Moreover, the provisions of the Act extend to any actions relating to the administration of lie detector, including polygraph, tests which occur within the territorial jurisdiction of the United States, e.g., the preparation of paperwork by a foreign corporation in a Miami office relating to a polygraph test that is to be administered on the high seas or in some foreign location.

§ 801.4 Prohibitions on lie detector use.

(a) Section 3 of EPPA provides that, unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part, covered employers are prohibited from:

- (1) Requiring, requesting, suggesting or causing, directly or indirectly, any employee or prospective employee to take or submit to a lie detector test;
- (2) Using, accepting, or inquiring about the results of a lie detector test of any employee or prospective employee; and
- (3) Discharging, disciplining, discriminating against, denying employment or promotion, or

threatening any employee or prospective employee to take such action for refusal or failure to take or submit to such test, on the basis of the results of a test, for filing a complaint, for testifying in any proceeding, or for exercising any rights afforded by the Act.

(b) An employer who reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to an employee(s) suspected of involvement in the reported incident. Employers who cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct provided that such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee's tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employer's premises, releasing an employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as "requiring, requesting, suggesting, or causing, directly or indirectly, any employee * * * to take or submit to a lie detector test." Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employer at the request or direction of police authorities, or through employer reimbursement of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request employer testing of employees before a police investigation is initiated on a reported incident. In other communities, police examiners are available to employers, on a cost reimbursement basis, to conduct tests on employees suspected by an employer of wrongdoing. All such conduct on the part of employers is deemed within the Act's prohibitions.

(c) The receipt by an employer of information from a polygraph test administered by police authorities pursuant to an investigation is prohibited by section 3(2) of the Act. (See paragraph (a)(2) of this section.)

(d) The simulated use of a polygraph instrument so as to lead an individual to believe that an actual test is being or may be performed (e.g., to illicit

confessions or admissions of guilt) constitutes conduct prohibited by paragraph (a) of this section. Such use includes the connection of an employee or prospective employee to the instrument without any intention of a diagnostic purpose, the placement of the instrument in a room used for interrogation unconnected to the employee or prospective employee, or the mere suggestion that the instrument may be used during the course of the interview.

§ 801.5 Effect on other laws or agreements.

(a) Section 10 of EPPA provides that the Act, except for subsections (a), (b), and (c) of section 7, does not preempt any provision of a State or local law, or any provision of a collective bargaining agreement, that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b)(1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employers.

(2) For example, if the State prohibits the use of polygraphs in all private employment, polygraph examinations could not be conducted pursuant to the limited exemptions provided in section 7 (d), (e) or (f) of the Act; a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in the Act; or more stringent licensing or bonding requirements in a State law would apply in addition to the Federal bonding requirement.

(3) On the other hand, industry exemptions and applicable restrictions thereon, provided in EPPA, would preempt less restrictive exemptions established by State law for the same industry, e.g., random testing of current employees in the drug industry not prohibited by State law but limited by this Act to tests administered in connection with ongoing investigations.

(c) EPPA does not impede the ability of State and local governments to enforce existing statutes or to enact subsequent legislation restricting the use of lie detectors with respect to public employees.

(d) Nothing in section 10 of the Act restricts or prohibits the Federal Government from administering polygraph tests to its own employees or to experts, consultants, or employees of contractors, as provided in subsections 7(b) and 7(c) of the Act, and § 801.11 of this part.

§ 801.6 Notice of protection.

Every employer subject to EPPA shall

post and keep posted on its premises a notice explaining the Act, as prescribed by the Secretary. Such notice must be posted in a prominent and conspicuous place in every establishment of the employer where it can readily be observed by employees and applicants for employment. Copies of such notice may be obtained from local offices of the Wage and Hour Division.

§ 801.7 Authority of the Secretary.

(a) Pursuant to section 5 of the Act, the Secretary is authorized to:

(1) Issue such rules and regulations as may be necessary or appropriate to carry out the Act;

(2) Cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the Act; and

(3) Make investigations and inspections as necessary or appropriate, through complaint or otherwise, including inspection of such records (and copying or transcription thereof), questioning of such persons, and gathering such information as deemed necessary to determine compliance with the Act or these regulations; and

(4) Require the keeping of records necessary or appropriate for the administration of the Act.

(b) Section 5 of the Act also grants the Secretary authority to issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with any investigation or hearing under the Act. The Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any investigation or hearing provided for in the Act, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary.

(c) In case of disobedience to a subpoena, the Secretary may invoke the aid of a United States District Court which is authorized to issue an order requiring the person to obey such subpoena.

(d) Any person may report a violation of the Act or these regulations to the Secretary by advising any local office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any authorized representative of the Administrator. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, Employment Standards Administration, for the region or area in

which the reported violation is alleged to have occurred.

(e) The Secretary shall conduct investigations in a manner which, to the extent practicable, protects the confidentiality of any complainant or other party who provides information to the Secretary in good faith.

(f) It is a violation of these regulations for any person to resist, oppose, impede, intimidate, or interfere with any official of the Department of Labor assigned to perform an investigation, inspection, or law enforcement function pursuant to the Act during the performance of such duties.

§ 801.8 Employment relationship.

(a) EPPA broadly defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relationship to an employee or prospective employee" (EPPA section 2(2)).

(b) EPPA restrictions apply to State Employment Services, private employment placement agencies, job recruiting firms, and vocational trade schools with respect to persons who may be referred to potential employers. Such entities are not liable for EPPA violations, however, where the referrals are made to employers for whom no reason exists to know that the latter will perform polygraph testing of job applicants or otherwise violate the provisions of EPPA.

(c) EPPA prohibitions against discrimination apply to former employees of an employer. For example, an employee may quit rather than take a lie detector test. The employer cannot discriminate or threaten to discriminate in any manner against that person (such as by providing bad references in the future) because of that person's refusal to be tested, or because that person files a complaint, institutes a proceeding, testifies in a proceeding, or exercises any right under EPPA.

Subpart E—Exemptions

§ 801.10 Exclusion for public sector employers.

(a) Section 7(a) provides an exclusion from the Act's coverage for the United States Government, any State or local government, or any political subdivision of a State or local government, acting in the capacity of an employer. This exclusion from the Act also extends to any interstate governmental agency.

(b) The term "United States Government" means any agency or instrumentality, civilian or military, of the executive, legislative, or judicial branches of the Federal Government, and includes independent agencies, wholly-owned government corporations,

and nonappropriated fund instrumentalities.

(c) The term "any political subdivision of a State or local government" means any entity which is either:

(1) Created directly by a state or local government, or

(2) Administered by individuals who are responsible to public officials (i.e., appointed by an elected public official(s) and/or subject to removal procedures for public officials, or to the general electorate.

(d) This exclusion from the Act applies only to the Federal, State, and local government entity with respect to its own public employees. Except as provided in sections 7 (b) and (c) of the Act, and § 801.11 of the regulations, this exclusion does not extend to contractors or nongovernmental agents of a government entity, nor does it extend to government entities with respect to employees of a private employer with which the government entity has a contractual or other business relationship.

§ 801.11 Exemption for national defense and security.

(a) The exemptions allowing for the administration of lie detector tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow private employers/contractors to administer such tests.

(b) Section 7(b)(1) of the Act provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any expert, consultant or employee of any contractor under contract with the Department of Defense; or with the Department of Energy, in connection with the atomic energy defense activities of such Department.

(c) Section 7(b)(2)(A) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function of the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency, to any individual employed by, assigned to, or detailed to any such agency; or any expert or consultant under contract to any such agency; or any employee of a contractor to such agency; or any individual applying for a position in any such agency; or any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency.

(d) Section 7(b)(2)(B) provides that nothing in the Act shall be construed to

prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any expert, or consultant (or employee of such expert or consultant) under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive Order).

(e) Section 7(c) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under a contract with the Bureau.

(f) "Counterintelligence" for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(g) Lie detector tests of persons described in the above paragraphs will be administered in accordance with applicable Department of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

§ 801.12 Exemption for employers conducting investigations of economic loss or injury.

(a) Section 7(d) of the Act provides a limited exemption from the general prohibition on lie detector use in private employment settings for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employer may request an employee, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.20, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, such as theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;

(2) The employee had access to the property that is the subject of the investigation;

(3) The employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employer provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the business of the employer;

(ii) A description of the employee's access to the property that is the subject of the investigation;

(iii) A description in detail of the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employer; and

(5) The employer retains a copy of the statement and proof of service described in paragraph (a)(4) of this section for at least 3 years and makes it available for inspection by the Wage and Hour Division on request. (See § 801.30(a).)

(Approved by the Office of Management and Budget under control number 1225-0170)

(b) For the exemption to apply, the condition of an "ongoing investigation" must be met. As used in section 7(d) of the Act, the ongoing investigation must be of a specific incident or activity.

Thus, for example, an employer may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employer is precluded by the Act. Further, because the exemption is limited to a specific incident or activity, an employer is precluded from using the exemption in situations where the so-called "ongoing investigation" is continuous. For example, the fact that items in inventory are frequently missing from a warehouse would not be a sufficient basis, standing alone, for administering a polygraph test. Even if the employer can establish that unusually high amounts of inventory are missing from the warehouse in a given month, this, in and of itself, would not be a sufficient basis to meet the specific incident requirement. On the other hand, polygraph testing in response to inventory shortages would be permitted where additional evidence is obtained through subsequent investigation of

specific items missing through intentional wrongdoing, and a reasonable suspicion that the employee to be polygraphed was involved in the incident under investigation. Administering a polygraph test in circumstances where the missing inventory is merely unspecified, statistical shortages, without identification of a specific incident or activity that produced the inventory shortages and a "reasonable suspicion that the employee was involved," would amount to little more than a fishing expedition and is prohibited by the Act.

(c)(1)(i) The terms "economic loss or injury to the employer's business" include both direct and indirect economic loss or injury.

(ii) Direct loss or injury includes losses or injuries resulting from theft, embezzlement, misappropriation, industrial espionage or sabotage. These examples, cited in the Act, are intended to be illustrative and not exhaustive. Another specific incident which would constitute direct economic loss or injury is the misappropriation of confidential or trade secret information.

(iii) Indirect loss or injury includes the use of an employer's business to commit a crime, such as check-kiting or money laundering. In such cases, the ongoing investigation must be limited to criminal activity that has already occurred, and to use of the employer's business operations (and not simply the use of the premises) for such activity. For example, the use of an employer's vehicles, warehouses, computers or equipment to smuggle or facilitate the importing of illegal substances constitutes an indirect loss or injury to the employer's business operations. Conversely, the mere fact that an illegal act occurs on the employer's premises (such as a drug transaction that takes place in the employer's parking lot or rest room) does not constitute an indirect economic loss or injury to the employer.

(iv) Indirect loss or injury also includes theft or injury to property of another for which the employer exercises fiduciary, managerial or security responsibility, or where the firm has custody of the property (but not property of other firms to which the employees have access by virtue of the business relationship). For example, if a maintenance employee of the manager of an apartment building steals jewelry from a tenant's apartment, the theft results in an indirect economic loss or injury to the employer because of the manager's management responsibility with respect to the tenant's apartment. A messenger on a delivery of confidential business reports for a client

firm who steals the reports causes an indirect economic loss or injury to the messenger service because the messenger service is custodian of the client firm's reports, and therefore is responsible for their security. Similarly, the theft of property protected by a security service employer is considered an economic loss or injury to that employer.

(v) A theft or injury to a client firm does not constitute an indirect loss or injury to an employer unless that employer has custody of, or management, or security responsibility for, the property of the client that was lost or stolen or injured. For example, a cleaning contractor has no responsibility for the money at a client bank. If money is stolen from the bank by one of the cleaning contractor's employees, the cleaning contractor does not suffer an indirect loss or injury.

(vi) Indirect loss or injury does not include loss or injury which is merely threatened or potential, e.g., a threatened or potential loss of an advantageous business relationship.

(2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test. Thus, apparently unintentional losses or injuries stemming from truck, car, workplace, or other similar type accidents or routine inventory or cash register shortages would not meet the economic loss or injury requirement. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement. It makes no difference that an employer may be obligated to directly or indirectly incur the cost of the incident, as through payment of a "deductible" portion under an insurance policy or higher insurance premiums.

(3) It is the business of the employer which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employer would not satisfy the requirement.

(d) While nothing in the Act prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employer (e.g., an accident involving a company vehicle).

(e) Section 7(d)(2) provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word "access", as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation. The term "access", thus, includes more than direct or physical contact during the course of employment. For example, as a general matter, all employees working in or with authority to enter a warehouse storage area have "access" to unsecured property in the warehouse. All employees with the combination to a safe have "access" to the property in a locked safe. Employees also have "access" who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employer's inventory records. In such a situation, it is clear that the bookkeeper effectively has "access" to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), "property" refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary, financial or technical information, such as trade secrets, which by its availability to competitors or others would cause economic harm to the employer.

(f)(1) As used in section 7(d)(3), the term "reasonable suspicion" refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for "reasonable suspicion". Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature or the fact that access was limited to a single individual) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9

a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employer asked the employee to bring the piece of jewelry to his or her office at 7:30 a.m., and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident unless access to the safe was limited solely to the employee. If no one other than the employee possessed the combination to the safe, and all other possible explanations for the loss are ruled out, such as a break-in, the employer may formulate a basis for reasonable suspicion based on sole access by one employee.

(3) The employer has the burden of establishing that the specific individual or individuals to be tested are "reasonably suspected" of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the Act sets forth what information, at a minimum, must be provided to an employee if the employer wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours, excluding weekend days and holidays, prior to the time of the examination. The statement must set forth the time and date of receipt by the employee and be verified by the employee's signature. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. Section 7(d)(4)(A) requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employer's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the "with particularity" criterion. If the basis for an employer's requesting

an employee (or employees) to take a polygraph test is not articulated with particularity, and reduced to writing, then the standard is not met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by the employer, or an employee or other representative of the employer with authority to legally bind the employer. The person signing the statement must not be a polygraph examiner unless the examiner is acting solely in the capacity of an employer with respect to his or her own employees and does not conduct the examination. The standard would not be met, and the exemption would not apply if the person signing the statement is not authorized to legally bind the employer.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.20, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 8 of the Act (see subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

§ 801.13 Exemption of employers authorized to manufacture, distribute, or dispense controlled substances.

(a) Section 7(f) provides an exemption from the Act's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. 812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms "manufacture", "distribute", "distribution", "dispense", "storage", and "sale", for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. 812 et seq.), as administered by the Drug Enforcement Administration (DEA), U.S. Department of Justice.

(2) The exemption in section 7(f) of the Act applies only to employers who are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. 812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Since this exemption is intended to apply only to employees and prospective employees of persons or entities registered with DEA, and is not intended to apply to truck drivers employed by persons or entities who are not so registered, it has no application to employees of common or contract carriers or public warehouses. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have "direct access" to the controlled substance(s) manufactured, dispensed, or distributed by the employer. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have "access" to the person or property that is the subject of the investigation.

(1) A prospective employee would have "direct access" if the position being applied for has responsibilities

which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have "direct access" if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have "access" within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in § 801.12(e) of this part. Thus, to test a current employee, the employee need not have had "direct" access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. For example, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have "access", but normally not "direct access", to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have "direct access" to such controlled substances. A pharmacy department in a supermarket is another common situation which is useful in illustrating the distinction between "direct access" and "access". Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have "direct access" to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled

substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have "access". Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have "access." However, any current employee, regardless of described job duties, may be polygraphed if the employer's investigation of criminal or other misconduct discloses that such employee in fact took action to obtain "access" to the person or property that is the subject of the investigation—e.g., by actually entering the drug storage area in violation of company rules. In the case of "direct access", the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's "access" to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term "prospective employee", for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a "prospective employee" for the purposes of this exemption, and thus could be subject to preemployment polygraph screening, prior to such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is considered a "prospective employee" for purposes of this section may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(e) Section 7(f) of the Act makes no specific reference to a requirement that employers provide current employees with a written statement prior to polygraph testing. Thus, employers to whom this exemption is available are not required to furnish a written

statement such as that specified in section 7(d) of the Act and § 801.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer.

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation of criminal or other misconduct, relating to a specific incident or activity, or potential incident or activity. Thus, an employer is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring. However, unlike the exemption in section 7(d) of the Act for employers conducting ongoing investigations of economic loss or injury, the section 7(f) exemption includes ongoing investigations of misconduct involving potential drug losses. Nor does the latter exemption include the requirement for "reasonable suspicion" contained in the section 7(d) exemption. Thus, a drug store employer is permitted to polygraph all current employees who have access to a controlled substance stolen from the inventory, or where there is evidence that such a theft is planned. Polygraph testing based on an inventory shortage of the drug during a particular accounting period would not be permitted unless there is extrinsic evidence of misconduct.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The noncontrolled products usually constitute the majority of such firms' sales volumes. An economic loss or injury related to such noncontrolled substances would not constitute a basis of applicability of the section 7(f) exemption. For example, an investigation into the theft of a gross of cosmetic products could not be a basis for polygraph testing under section 7(f), but the theft of a container of valium could be.

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the Act and § 801.12 of this part. However, the exemption in section 7(f) of the Act and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see subpart E, § 801.40 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

§ 801.14 Exemption for employers providing security services.

(a) Section 7(e) of the Act provides an exemption from the general prohibition against polygraph tests for certain armored car, security alarm, and security guard employers. Subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, section 7(e) permits the use of polygraph tests on certain prospective employees provided that such employers have as their primary business purpose the providing of armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel; and provided the employer's function includes protection of:

(1) Facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, such as—

(i) Facilities engaged in the production, transmission, or distribution of electric or nuclear power,

(ii) Public water supply facilities,

(iii) Shipments or storage of radioactive or other toxic waste materials, and

(iv) Public transportation; or

(2) Currency, negotiable securities, precious commodities or instruments, or proprietary information.

(b)(1) Section 7(e) permits the administration of polygraph tests only to prospective employees. However, security service employers may administer polygraph tests to current employees in connection with an ongoing investigation, subject to the conditions of section 7(d) of the Act and § 801.12 of this part.

(2) The term "prospective employee" generally refers to an individual who is not currently employed by and who is being considered for employment by an employer. However, the term "prospective employee" also includes current employees under circumstances similar to those discussed in paragraph (d) of § 801.13 of this part, i.e., if the employee was initially hired for a position which was not within the exemption provided by section 7(e) of the Act, and subsequently applies for, and is under consideration for, transfer to a position for which pre-employment testing is permitted. Thus, for example, a security guard may be hired for a job outside the scope of the exemption's provisions for pre-employment polygraph testing, such as a position at a supermarket. If subsequently this guard is under consideration for transfer or promotion to a job at a nuclear power plant, this currently-employed individual would be considered to be a "prospective employee" for purposes of this exemption, prior to such proposed transfer or promotion. However, any adverse action which is based in part on a polygraph test against a current employee who is considered to be a "prospective employee" for purposes of this exemption may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(c) Section 7(e) applies to certain private employers whose "primary business purpose" consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel. Thus, the exemption is limited to firms primarily in the business of providing such security services, and does not apply to firms primarily in some other business who employ their own security personnel. (For example, a utility company which employs its own security personnel could not qualify.) In the case of diversified firms, the term "primary business purpose" shall mean that at least 50% of the employer's annual dollar volume of business is derived

from the provision of the types of security services specifically identified in section 7(e). Where a parent corporation includes a subsidiary corporation engaged in providing security services, the annual dollar volume of business test is applied to the legal entity (or entities) which is the employer, i.e., the subsidiary corporation, not the parent corporation.

(d)(1) As used in section 7(e)(1)(A), the terms "facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States" include protection of electric or nuclear power plants, public water supply facilities, radioactive or other toxic waste shipments or storage, and public transportation. These examples are intended to be illustrative, and not exhaustive. However, the types of "facilities, materials, or operations" within the scope of the exemption are not to be construed so broadly as to include low priority or minor security interests. The "facilities, materials, or operations" in question consist only of those having a "significant impact" on public health or safety, or national security. However, the "facilities, materials, or operations" may be either privately or publicly owned.

(2) The specific "facilities, materials, or operations" contemplated by this exemption include those against which acts of sabotage, espionage, terrorism, or other hostile, destructive, or illegal acts could significantly impact on the general public's safety or health, or national security. In addition to the specific examples set forth in the Act and in paragraph (d)(1) of this section, the terms would include:

(i) Facilities, materials, and operations owned or leased by Federal, State, or local governments, including instrumentalities or interstate agencies thereof, for which an authorized public official has determined that a need for security exists, as evidenced by the establishment of security requirements utilizing private armored car, security alarm system, or uniformed or plainclothes security personnel, or a combination thereof. Examples of such facilities, materials and operations include:

- (A) Government office buildings;
- (B) Prisons and correction facilities;
- (C) Public schools;
- (D) Public libraries;
- (E) Water supply;
- (F) Military reservations, installations, posts, camps, arsenals, laboratories, Government-owned and contractor operated (GOCO) or Government-

owned and Government-operated (GOCO) industrial plants, and other similar facilities subject to the custody, jurisdiction, or administration of any Department of Defense (DOD) component;

(ii) Commercial and industrial assets and operations which—

(A) Are protected pursuant to security requirements established in contracts with the United States or other directives by a Federal agency (such as those of defense contractors and researchers), including factories, plants, buildings, or structures used for researching, designing, testing, manufacturing, producing, processing, repairing, assembling, storing, or distributing products or components related to the national defense; or

(B) Are protected pursuant to security requirements imposed on registrants under the Controlled Substances Act; or

(C) Would pose a serious threat to public health or safety in the event of a breach of security (this would include, for example, a plant engaged in the manufacture or processing of hazardous materials or chemicals but would not include a plant engaged in the manufacture of shoes);

(iii) Public and private energy and precious mineral facilities, supplies, and reserves, including—

(A) Public or private power plants and utilities;

(B) Oil or gas refineries and storage facilities;

(C) Strategic petroleum reserves; and

(D) Major dams, such as those which provide hydroelectric power;

(iv) Major public or private transportation and communication facilities and operations, including—

(A) Airports;

(B) Train terminals, depots, and switching and control facilities;

(C) Major bridges and tunnels;

(D) Communications centers, such as receiving and transmission centers, and control centers;

(E) Transmission and receiving operations for radio, television, and satellite signals; and

(F) Network computer systems containing data important to public health and safety or national security;

(v) The Federal Reserve System and stock and commodity exchanges;

(vi) Hospitals and health research facilities;

(vii) Large public events, such as political conventions and major parades, concerts, and sporting events; and

(viii) Large enclosed shopping centers (malls).

(3) If an employer believes that "facilities, materials, or operations"

which are not listed in this subsection fall within the contemplated purview of this exemption, a request for a ruling may be filed with the Administrator. A ruling that such "facilities, materials, or operations" are included within this exemption must be obtained prior to the administration of a polygraph test or any other action prohibited by section 3 of the Act. It is not possible to exhaustively account for all "facilities, materials, or operations" which fall within the purview of section 7(e) (1) (A). While it is likely that additional entities may fall within the exemption's scope, any such "facilities, materials, or operations" must meet the "significant impact" test. Thus, "facilities, materials, or operations" which would be of vital importance during periods of war or civil emergency, or whose sabotage would greatly affect the public health or safety, could fall within the scope of the term "significant impact".

(e)(i) Section 7(e)(1)(B) of the Act extends the exemption to firms whose function includes protection of "currency, negotiable securities, precious commodities or instruments, or proprietary information". These terms collectively are construed to include assets primarily handled by financial institutions such as banks, credit unions, savings and loan institutions, stock and commodity exchanges, brokers, or security dealers.

(ii) The terms "currency, negotiable securities, precious commodities or instruments or proprietary information" refer to assets which are typically handled by, protected for and transported between and among commercial and financial institutions. Services provided by the armored car industry are thus clearly within the scope of the exemption, as are security alarm and security guard services provided to financial and similar institutions of the type referred to above. Also included are the cash assets handled by casinos, racetracks, lotteries, or other businesses where the cash constitutes the inventory or stock in trade. Similarly, security services provided to businesses engaged in the sale or exchange of precious commodities such as gold, silver, or diamonds, including jewelry stores that stock such precious commodities prior to transformation into pieces of jewelry, are also included. The term "proprietary information" generally refers to business assets such as trade secrets, manufacturing processes, research and development data, and cost/pricing data. Security alarm or guard services provided to protect the premises of private homes, or businesses not

primarily engaged in handling, trading, transferring, or storing currency, negotiable securities, precious commodities or instruments, or proprietary information, on the other hand, are normally outside the scope of the exemption. This is true even though such places may physically house some such assets. However, where such security alarm or guard service is specifically designed or limited to the protection of the types of assets identified above, whether located in businesses or residences, or elsewhere, the security services provided are within the scope of the exemption. For example, a security system specially designed to protect diamonds kept in a home vault of a diamond merchant would be within the exemption. However, a security system installed generally to protect the premises of the home of the same merchant would not be within the exemption. A guard sent to a client firm to secure a restricted office in which only proprietary research data is developed and stored is within the scope of the exemption. Another guard sent to the same firm to protect the building entrance from unwanted intruders is not within the scope of the exemption even though the building contains the restricted room in which the proprietary research data is developed and stored, since the security system is not specifically designed to protect the proprietary information.

(f) An employer who falls within the scope of the exemption is one "whose function includes" protection of "facilities, materials, or operations", discussed in paragraph (d) of this section or of "currency, negotiable securities, precious commodities or instruments, or proprietary information" discussed in paragraph (e) of this section. Thus, assuming that the employer has met the "primary business purpose" test, as set forth in paragraph (c) of this section, the employer's operations then must simply "include" protection of at least one of the facilities within the scope of the exemption.

(g)(1) Section 7(e) (2) provides that the exemption shall not apply if a polygraph test is administered to a prospective employee who would not be employed to protect the "facilities, materials, operations, or assets" referred to in section 7(e) (1) of the Act, and discussed in paragraphs (d) and (e) of this section. Thus, while the exemption applies to employers whose function "includes" protection of certain facilities, employers would not be permitted to administer polygraph tests to prospective employees who are not

being employed to protect such functions.

(2) The phrase "employed to protect" in section 7(e)(2) has reference to a wide spectrum of prospective employees in the security industry, and includes any job applicant who would likely protect the security of any qualifying "facilities, materials, operations, or assets."

(3) In many cases, it will be readily apparent that certain positions within security companies would, by virtue of the individual's official job duties, entail "protection". For example, armored car drivers and guards, security guards, and alarm system installers and maintenance personnel all would be employed to protect in the most direct and literal sense of the term.

(4) The scope of the exemption is not limited, however, to those security personnel having direct, physical access to the facilities being protected. Various support personnel may also, as a part of their job duties, have access to the process of providing security services due to the position's exposure to knowledge of security plans and operations, employee schedules, delivery schedules, and other such activities. Where a position entails the opportunity to cause or participate in a breach of security, an employee to be hired for the position would also be deemed to be "employed to protect" the facility.

(i) For example, in the armored car industry, the duties of personnel other than guards and drivers may include taking customer orders for currency and commodity transfers, issuing security badges to guards, coordinating routes of travel and times for pick-up and delivery, issuing access codes to customers, route planning and other sensitive responsibilities. Similarly, in the security alarm industry, several types of employees would have access to the process of providing security services, such as designers of security systems, system monitors, service technicians, and billing clerks (where they review the system design drawings to ensure proper customer billing). In the security industry, generally, administrative employees may have access to customer accounts, schedules, information relating to alarm system failures, and other security information, such as security employee absences due to illness that create "holes" in a security plan. Employees of this type are a part of the overall security services provided by the employer. Such employees possess the ability to affect, on an opportunistic basis, the security of protected operations, by virtue of the

knowledge gained through their job duties.

(ii) On the other hand, there are certainly some types of employees in the security industry who "would not be employed to protect" the facilities or assets within the purview of the exemption, and who would not be in the process of providing exempt security services. For example, custodial and maintenance employees typically would not have access, either directly or indirectly as a part of their job duties, to the operations or clients of the employer. Any employee whose "access" to secured areas or to sensitive information is on a controlled basis, such as by escort, would also be outside the scope of the exemption. In cases where security service companies also provide janitorial, food and beverage, or other services unrelated to security, the exemption would clearly not extend to any employee considered for employment in such activity.

(5) The phrase "employed to protect" includes any job applicant who, if not hired specifically to protect the listed facilities or assets, would likely be so employed, as through a systematic assignment process, such as rotation of work assignments or selection from a pool of available employees, even if selection for such work is unpredictable or infrequent. A prospective employee whose job assignment to perform qualifying protective functions would be made by selection from a pool of available employees (all of whom have an equal chance of being selected), or an employee who is to be rotated through different job assignments which include some qualifying protective functions, is included within the exemption. However, if there is only a remote possibility that a prospective employee, if hired, would perform exempt protective functions, such as on an emergency basis, or if a prospective employee by reason of his or her position, qualifications, or level of experience or for other reasons, would when hired, not ordinarily be assigned to protect qualifying facilities, such an employee would be deemed to have not been hired to protect such facilities and would be excluded from the exemption.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for

polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detectors test, or contain more restrictive provisions with respect to polygraph testing.

Subpart C—Restrictions on Polygraph Usage Under Exemptions

§ 801.20 Adverse employment action under ongoing investigation exemption.

(a) Section 8(a) (1) of the Act provides that the limited exemption in section 7(d) of the Act and § 801.12 of this part for ongoing investigations shall not apply if an employer discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) "Additional supporting evidence", for purposes of section 8(a) of the Act, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employer observes all the requirements of sections 7(d) and 8(b) of the Act, as described in §§ 801.12, 801.22, 801.23, 801.24, and 801.25 of this part.

§ 801.21 Adverse employment action under security service and controlled substance exemptions.

(a) Section 8(a) (2) of the Act provides that the security service exemption in section 7(e) of the Act and § 801.14 of this part and the controlled substance exemption in section 7(f) of the Act and § 801.13 of this part shall not apply if an employer discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective

employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section, provided that the adverse action was also based on another bona fide reason, with supporting evidence therefor. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employer observes all the requirements of section 7 (e) or (f) of the Act, as appropriate, and section 8(b) of the Act, as described in §§ 801.13, 801.14, 801.22, 801.23, 801.24, and 801.25 of this part.

§ 801.22 Rights of examinee—general.

(a) Pursuant to section 8(b) of the Act, the limited exemption in section 7(d) of the Act for ongoing investigations, and the security service and controlled substance exemptions in 7(e) and (f) of the Act (described in § 801.12, 801.13, and 801.14 of this part) shall not apply unless all of the requirements set forth in this section and §§ 801.23 through 801.25 of this part are met.

(b) During all phases of the polygraph testing the person being examined has the following rights:

(1) The examinee may terminate the test at any time.

(2) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner.

(3) The examinee may not be asked any questions dealing with:

(i) Religious beliefs or affiliations;
(ii) Beliefs or opinions regarding racial matters;

(iii) Political beliefs or affiliations;
(iv) Sexual preferences or behavior; or

(v) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations.

(4) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment

that might cause abnormal responses during the actual testing phase.

"Sufficient written evidence" shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(5) An employee or prospective employee who exercises the right to terminate the test, or who for medical reasons with sufficient supporting evidence is not administered the test, shall be subject to adverse employment action only on the same basis as one who refuses to take a polygraph test, as described in §§ 801.20 and 801.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases, which must be conducted in accordance with the rights of examinees described in §§ 801.23 through 801.25 of this part.

§ 801.23 Rights of examinee—pretest phase.

(a) The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument. During the initial pretest phase, the examinee must be:

(1) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination, except that a prospective employee may, at the employee's option, give written consent to administration of a test anytime within 48 hours but no earlier than 24 hours after receipt of the written notice. The written notice or proof of service must set forth the time and date of receipt by the employee or prospective employee and be verified by his or her signature. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. Provision shall also be made for a convenient place on the premises where the examination will take place at which the examinee may consult privately with an attorney or an employee representative before each phase of the test. The attorney or representative may be excluded from the room where the

examination is administered during the actual testing phase.

(2) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(3) Provided with a written notice prior to the testing phase, in a language understood by the examinee, which shall be read to and signed by the examinee. Use of appendix A to this part, if properly completed, will constitute compliance with the contents of the notice requirement of this paragraph. If a format other than in appendix A is used, it must contain at least the following information:

(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employer have the right, with the other's knowledge, to make a recording of the entire examination;

(iv) That the examinee has the right to terminate the test at any time;

(v) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(vi) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(vii) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(viii) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(ix) That the test is not and cannot be required as a condition of employment;

(x) That the employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(xi)(A) In connection with an ongoing investigation, that the additional evidence required for the employer to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (a)(3)(x) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency;

(xii) That information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(A) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(B) To the employer that requested the test;

(C) To a court, governmental agency, arbitrator, or mediator pursuant to a court order;

(D) To a U.S. Department of Labor official when specifically designated in writing by the examinee to receive such information;

(E) By the employer, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(xiii) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to obtain compliance with the Act, and may assess civil money penalties against the employer;

(xiv) That the examinee has the right to obtain and consult with legal counsel or other representative before each phase of the test, although the legal counsel or representative may be excluded from the room where the test

is administered during the actual testing phase.

(xv) That the employee's rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, agreed to and signed by the parties.

(b) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase. Such questions may be presented at any point in time prior to the testing phase.

§ 801.24 Rights of examinee—actual testing phase.

(a) The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the testing phase. An examiner may, however, recess the testing phase and return to the pre-test phase to review additional relevant questions with the examinee. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions (as distinguished from technical baseline questions) pertain to the investigation.

(b) No testing period subject to the provisions of the Act shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee of the nature and characteristics of the examination and the instruments involved, as prescribed in section 8(b)(2)(B) of the Act and § 801.23 (a)(2) of this part, and ends when the examiner completes the review of the test results with the examinee as provided in § 801.25 of this part. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test before the completion thereof, in which event the examiner may not render an opinion regarding the employee's truthfulness.

§ 801.25 Rights of examinee—post-test phase.

(a) The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employer must:

(1) Further interview the examinee on the basis of the test results; and

(2) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses. The term "corresponding charted responses" refers to copies of the entire examination charts recording the employee's physiological responses, and not just the examiner's written report which describes the examinee's responses to the questions as "charted" by the instrument.

§ 801.26 Qualifications of and requirements for examiners.

(a) Section 8 (b) and (c) of the Act provides that the limited exemption in section 7(d) of the Act for ongoing investigations, and the security service and controlled substances exemptions in section 7 (e) and (f) of the Act, shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of \$50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employer pursuant to § 801.30(c) of this part:

(1) Observe all rights of examinees, as set out in §§ 801.22, 801.23, 801.24, and 801.25 of this part;

(2) Administer no more than five polygraph examinations in any one calendar day on which a test or tests subject to the provisions of EPPA are administered, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase;

(3) Administer no polygraph examination subject to the provisions of the Act which is less than ninety minutes in duration, as described in § 801.24(b) of this part;

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to

the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee; and

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including statements signed by examinees advising them of rights under the Act (as described in § 801.23 (a)(3) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See § 801.30 of this part for recordkeeping requirements.)

Subpart D—Recordkeeping and Disclosure Requirements

§ 801.30 Records to be preserved for 3 years.

(a) The following records shall be kept for a minimum period of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employer who requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee, as required by section 7(d)(4) of the Act and described in § 801.12 (a)(4) of this part.

(2) Each employer who administers a polygraph examination under the exemption provided by section 7(f) of the Act (described in § 801.13 of this part) in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution or dispensing of a controlled substance, shall retain records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.

(3) Each employer who requests an employee or prospective employee to submit to a polygraph examination pursuant to any of the exemptions under section 7(d), (e) or (f) of the Act (described in §§ 801.12, 801.13, and 801.14) shall retain a copy of the written statement that sets forth the time and place of the examination and the examinee's right to consult with counsel, as required by section 8 (b)(2)(A) of the Act and described in § 801.23(a)(1) of this part.

(4) Each employer shall identify in writing to the examiner persons to be

examined pursuant to any of the exemptions under section 7 (d), (e) or (f) of the Act (described in §§ 801.12, 801.13, and 801.14 of this part), and shall retain a copy of such notice.

(5) Each employer who retains an examiner to administer examinations pursuant to any of the exemptions under section 7 (d), (e) or (f) of the Act (described in §§ 801.12, 801.13, and 801.14 of this part) shall maintain copies of all opinions, reports or other records furnished to the employer by the examiner relating to such examinations.

(6) Each examiner retained to administer examinations to persons identified by employers under paragraph (a)(4) of this section shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons. In addition, the examiner shall maintain records of the number of examinations conducted during each day in which one or more tests are conducted pursuant to the Act, and, with regard to tests administered to persons identified by their employer under paragraph (a)(4) of this section, the duration of each test period, as defined in § 801.24(b) of this part.

(b) Each employer shall keep the records required by this part safe and accessible at the place or places of employment or at one or more established central recordkeeping offices where employment records are customarily maintained. If the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Secretary or an authorized representative.

(c) Each examiner shall keep the records required by this part safe and accessible at the place or places of business or at one or more established central recordkeeping offices where examination records are customarily maintained. If the records are maintained at a central recordkeeping office, other than in the place or places of business, such records shall be made available within 72 hours following notice from the Secretary or an authorized representative.

(d) All records shall be available for inspection and copying by the Secretary or an authorized representative. Information for which disclosure is restricted under section 9 of the Act and § 801.35 of this part shall be made available to the Secretary or the Secretary's representative where the examinee has designated the Secretary, in writing, to receive such information,

or by order of a court of competent jurisdiction.

(Approved by the Office of Management and Budget under control number 1215-0170)

§ 801.35 Disclosure of test information.

Section 9 of the Act prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employer (other than an employer exempt under section 7 (a), (b), or (c) of the Act (described in §§ 801.10 and 801.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employer that requested the polygraph test pursuant to the provisions of this Act (including management personnel of the employer where the disclosure is relevant to the carrying out of their job responsibilities);

(3) Any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction requiring the production of such information;

(4) The Secretary of Labor, or the Secretary's representative, when specifically designated in writing by the examinee to receive such information.

(b) An employer may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records), to another examiner(s) for examination and analysis, provided that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this Part provided that the other examiner has no direct or indirect interest in the matter.

Subpart E—Enforcement

§ 801.40 General.

(a) Whenever the Secretary believes that the provisions of the Act or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including the following:

(1) Petitioning any appropriate District Court of the United States for temporary or permanent injunctive relief to restrain violation of the provisions of the Act or this part by any person, and to require compliance with the Act and this part, including such legal or equitable relief incident thereto as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits;

(2) Assessing a civil penalty against any employer who violates any provision of the Act or this part in an amount of not more than \$10,000 for each violation, in accordance with regulations set forth in this part; or

(3) Referring any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery.

(b)(1) Any employer who violates this Act shall be liable to the employee or prospective employee affected by such violation for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) An action under this subsection may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee and others similarly situated. Such action must be commenced within a period not to exceed 3 years after the date of the alleged violation. The court, in its discretion, may allow reasonable costs (including attorney's fees) to the prevailing party.

(c) The taking of any one of the actions referred to in paragraph (a) of this section shall not be a bar to the concurrent taking of any other appropriate action.

§ 801.41 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under section 6 of the Act, as described in § 801.40 of this part.

(b) The Solicitor of Labor, through authorized representatives, shall represent the Administrator in all administrative hearings under the provisions of section 6 of the Act and this part.

§ 801.42 Civil money penalties—assessment.

(a) A civil money penalty in an amount not to exceed \$10,000 for any violation may be assessed against any employer for:

(1) Requiring, requesting, suggesting or causing an employee or prospective employee to take a lie detector test or using, accepting, referring to or inquiring about the results of any lie detector test or any employee or prospective employee, other than as provided in the Act or this part;

(2) Taking an adverse action or discriminating in any manner against any employee or prospective employee on the basis of the employee's or prospective employee's refusal to take a lie detector test, other than as provided in the Act or this part;

(3) Discriminating or retaliating against an employee or prospective employee for the exercise of any rights under the Act;

(4) Disclosing information obtained during a polygraph test, except as authorized by the Act or this part;

(5) Failing to maintain the records required by the Act or this part;

(6) Resisting, opposing, impeding, intimidating, or interfering with an official of the Department of Labor during the performance of an investigation, inspection, or other law enforcement function under the Act or this part; or

(7) Violating any other provision of the Act or this part.

(b) In determining the amount of penalty to be assessed for any violation of the Act or this part, the Administrator will consider the previous record of the employer in terms of compliance with the Act and regulations, the gravity of the violations, and other pertinent factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of investigation(s) or violation(s) of the Act or this part;

(2) The number of employees or prospective employees affected by the violation or violations;

(3) The seriousness of the violation or violations;

(4) Efforts made in good faith to comply with the provisions of the Act and this part;

(5) If the violations resulted from the actions or inactions of an examiner, the steps taken by the employer to ensure the examiner complied with the Act and the regulations in this part, and the extent to which the employer could reasonably have foreseen the examiner's actions or inactions;

(6) The explanation of the employer, including whether the violations were

the result of a bona fide dispute of doubtful legal certainty;

(7) The extent to which the employee(s) or prospective employee(s) suffered loss or damage;

(8) Commitment to future compliance, taking into account the public interest and whether the person has previously violated the provisions of the Act or this part.

§ 801.43 Civil money penalties—payment and collection.

Where the assessment is directed in a final order of the Department, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor". The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

Subpart F—Administrative Proceedings**General****§ 801.50 Applicability of procedures and rules.**

The procedures and rules contained in this subpart prescribe the administrative process for assessment of civil money penalties for violations of the Act or of these regulations.

Procedures Relating to Hearing**§ 801.51 Written notice of determination required.**

Whenever the Administrator determines to assess a civil money penalty for a violation of the Act or this part, the person against whom such penalty is assessed shall be notified in writing of such determination. Such notice shall be served in person or by certified mail.

§ 801.52 Contents of notice.

The notice required by § 801.51 of this part shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor;

(b) Set forth a description of each violation and the amount assessed for each violation;

(c) Set forth the right to request a hearing on such determination;

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Administrator shall become final and unappealable; and

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 801.53 of this part.

§ 801.53 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, US Department of Labor, no later than thirty (30) days after the service of the notice referred to in § 801.59 of this part.

(b) The request for hearing must be received by the Administrator at the address set forth in the notice issued pursuant to § 801.52 of this part, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

(c) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

Rules of Practice**§ 801.58 General.**

Except as provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

§ 801.59 Service and computation of time.

(a) Service of documents under this subpart shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee.

(b) Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this part shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

(d) When a request for hearing is served by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

§ 801.60 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 801.53 of this part.

§ 801.61 Designation of record.

(a) Each administrative proceeding instituted under the Act and this part shall be identified of record by a number preceded by the year and the letters "EPPA".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 801.62 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In Matter of _____,
Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 801.63 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 801.53 of this part,

the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 801.64 Notice of docketing.

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

Procedures Before Administrative Law Judge

§ 801.65 Appearances; representation of the Department of Labor.

The Associate Solicitor, Division of Fair Labor Standards, or Regional Solicitor shall represent the Department in any proceeding under this part.

§ 801.66 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into, in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

§ 801.67 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers, a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 801.53 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material

issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) If any party desires review of the decision of the Administrative Law Judge, a petition for issuance of a Notice of Intent shall be filed in accordance with section 801.69 of this subpart.

(g) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the secretary, pursuant to § 801.70 of this subpart issues a Notice of Intent to Modify or vacate the Decision and Order.

Modification or Vacation of Decision and Order of Administrative Law Judge

§ 801.68 Authority of the Secretary.

(a) The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(1) Is inconsistent with a policy or precedent established by the Department of Labor;

(2) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(3) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive; or

(4) Otherwise warrants modifying or vacating.

(b) The Secretary may modify or vacate a finding of fact only where the Secretary determines that the finding is clearly erroneous.

§ 801.69 Procedures for Initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 801.70. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. Copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

§ 801.70 Implementation by the Secretary.

(a) Review of the Decision and Order by the Secretary shall not be a matter of right but of the sound discretion of the Secretary. At any time within 30 days after the issuance of the Decision and Order of the Administrative Law Judge the Secretary may, upon the Secretary's own motion or upon the acceptance of a party's petition, issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§ 801.71 Filing and service.

(a) Filing. All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) Number of copies. An original and two copies of all documents shall be filed.

(c) Computation of time for delivery by mail. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time thereafter, was made by mail.

(d) Manner and proof of service. A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 801.72 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, forward a copy of the

complete hearing record to the Secretary.

§ 801.73 Final decision of the Secretary.

The Secretary's final Decision and Order shall be served upon all parties and the Chief Administrative Law Judge.

Record

§ 801.74 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 801.75 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a Decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Appendix A to Part 801—Notice to Examinee

Section 8(b) of the Employee Polygraph Protection Act, and Department of Labor regulations (29 CFR 801.22, 801.23, 801.24, and 801.25) require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording, [will] [will not] be used during the examination.

(c) Both you and the employer have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employer may not discharge, dismiss discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employer to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employer's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employer that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(4) To a U.S. Department of Labor official when specifically designated in writing by you to receive such information.

(b) Information acquired from a polygraph test may be disclosed by the employer to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be

appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

6. Your rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

(Date)

(Signature)

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federal register

Monday
March 4, 1991

Part III

Department of Defense

48 CFR Part 202 et al
Department of Defense Acquisition
Regulations; Miscellaneous Amendments;
Interim and Final Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 203, 204, 217, 225, 228, 232, 245, 252, and Appendix N

[Defense Acquisition Circular (DAC) 88-17]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-17 amends the DoD FAR Supplement (DFARS) coverage on procurement integrity, statutory compensation prohibitions and reporting requirements relating to certain former DoD employees, employment of convicted felons, defense priorities and allocations system, multiyear contracting, Small Business Competitiveness Demonstration Program, Trade Agreements Act, duty-free entry, machine tools and valves, Anti-Deficiency Act, flexible progress payments, rent-free use of Government property on foreign military sales, contractor performance of plant clearance functions, and miscellaneous editorial items.

DATES: Effective Date: February 28, 1991, except for sections 225.000-70, 225.000-71, 225.105-70, 225.109, 225.401, 225.402, 225.407, 252.225-7001, 252.225-7005, and 252.225-7006 (Item VII, Trade Agreements Act) which were effective January 28, 1991, sections 225.603-70, 252.225-7008, and 252.225-7014 (Item VIII, Duty-Free Entry) which were effective December 19, 1990, and sections 245.401 and 245.405 (Item XIII, Rent-Free Use of Government Property on Foreign Military Sales) which were effective February 1, 1991.

Comment Date: Comments on the interim rules, sections 203.571 and 252.203-7001 (Item III, Employment of Convicted Felons), sections 225.000-70, 225.000-71, 225.105-70, 225.109, 225.401, 225.402, 225.407, 252.225-7001, 252.225-7005, and 252.225-7006 (Item VII, Trade Agreements Act), and sections 225.603-70, 252.225-7008, and 252.225-7014 (Item VIII, Duty-Free Entry) should be submitted to the address below by April 3, 1991, to be considered in formulating the final rule. In all correspondence concerning these rules, please cite DAR Case 90-310 for Item III, DAR Case 89-106 for Item VII, and DAR Case 90-047 for Item VIII.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory System, OUSD(A), ATTN: Valorie Lee (Item III),

Alyce Sullivan (Items VII or VIII), c/o 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

Determinations have been made under the authority of the Secretary of Defense to issue the regulations in Items III, VII, and VIII of DAC #88-17 as interim rules. Compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rules.

B. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The October 1, 1990 revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-15.

DAC #88-17, Item IX. This document finalizes interim regulations which were published in the July 24, 1990, Federal Register (55 FR 30154).

DAC #88-17, Item VI. This document finalizes interim regulations which were published in the January 27, 1989, Federal Register (54 FR 4246).

C. Public Comments

DAC 88-17, Items III, VII, and VIII

These items are published as interim rules. Public comment is invited.

DAC 88-17, Items I, II, V, X, XI, XII, XIV, and XV

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-17, Items VI, IX, and XIII

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item VI was published January 27, 1989 (54 FR 4246).

Item IX was published July 24, 1990 (55 FR 30154).

Item XIII was published September 18, 1990 (55 FR 38340).

D. Regulatory Flexibility Act

DAC 88-17, Items I, II, V, X, XI, XII, XIII, XIV, and XV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Pub. L. 98-577. However, comments from small entities concerning the affected DoD FAR Supplement Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90-610 in correspondence.

DAC 88-17, Item VI

This rule may have a significant effect on small business concerns but sufficient data is not available at this point to quantify the impact. As stated in the joint Small Business Administration (SBA)/Office of Federal Procurement Policy (OFPP), policy directive (53 FR 52889), the OFPP and SBA will prepare a regulatory flexibility analysis when adequate data is available.

DAC 88-17, Items III, VII, and VIII

These interim rules are not expected to have a significant economic impact on a substantial number of small entities because they have limited application. A Regulatory Flexibility analysis has not been prepared. However, comments received from small entities will be considered in developing the final rules.

DAC 88-17, Item IX

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Comments received in response to a notice of interim rule published July 24, 1990 (55 FR 30154) were considered in developing the final rule.

E. Paperwork Reduction Act

DAC 88-17, Items I, II, III, V, VII, IX, X, XI, XII, XIII, XIV, and XV

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-17, Item VI

The Paperwork Reduction Act applies. This rule is based on the OMB terms of clearance under OMB Control Number 9000-0100.

DAC 88-17, Item VIII

The Paperwork Reduction Act applies. This rule is based on the terms of

clearance under Department of Treasury clearance 1515.0170.

List of Subjects in 48 CFR Parts 202, 203, 204, 217, 225, 228, 232, 245, and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

(Defense Acquisition Circular No. 88-17, dated February 28, 1991.)

All DoD FAR Supplement and other directive material contained in this circular is effective February 28, 1991, unless otherwise specified in the Item summary. Material effective February 28, 1991, is to be used upon receipt. Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 17 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Procurement Integrity

DFARS 203.104 is revised to clarify the language. These revisions are the result of public comments received on the FAR interim rule published in the Federal Register on May 11, 1989 (54 FR 20491).

Item II—Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees

DFARS 203.170-2 and the clause at 252.203-7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, are revised to reflect the prohibition suspensions imposed by section 507 of the Ethics Reform Act of 1989 and section 815 of the fiscal 1991 DoD Authorization Act (Pub. L. 101-510). Section 507 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989 to November 30, 1990. Section 815 continued the suspension from December 1, 1990 through May 31, 1991.

Item III—Employment of Convicted Felons

DFARS 203.571 and the clause at 252.203-7001, Special Prohibition on Employment, are revised, on an interim basis, to limit the 10 U.S.C. 2408 prohibition on employment of convicted felons to prime contractors and first-tier subcontractors. This interim rule

implements section 812 of the fiscal 1991 DoD Authorization Act.

Item IV—Defense Priorities and Allocations System

The Defense Production Act of 1950 expired on October 20, 1990. Executive Order 12742, signed by the President on January 8, 1991, provides authority under the Selective Service Act of 1948 and several other related statutes to continue the priorities provisions and approved defense related programs under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The executive order authorizes the placement of contracts and orders and the priority performance of these contracts and orders to achieve the prompt delivery of articles, products, and materials to meet national security requirements. Therefore, the procedures for rated orders in FAR subpart 12.3 and DFARS subpart 212.3 are still in effect.

Item V—Multiyear Contracting

DFARS 217.1 is amended to include additional criteria and limitations on multiyear contracting as required by Public Laws 101-165, 101-510, and 101-199. The new coverage requires that multiyear contracts (1) provide for a rate of production which is not less than the minimum economic rate, given existing tooling and facilities and (2) result in substantial savings compared to the cost of annual contracts. In addition, multiyear contracts cannot be initiated without use of a present value analysis to determine lowest cost to the Government and once approved by Congress, may not be terminated without ten-day prior notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate. The new coverage also includes other reporting and funding requirements. The coverage has been reorganized and what had been part of 217.103-70 is now in 217.103-1.

Item VI—Small Business Competitiveness Demonstration Program

Subpart 219.10 is revised and the provisions at 252.219-7012, 252.219-7013, and 252.219-7014 are deleted as this language has been added to the FAR by FAC 90-03; Item 22. This converts subpart 219.10 from an interim rule to a final rule.

Item VII—Trade Agreements Act

This item was effective January 28, 1991, upon issuance of Departmental Letter 91-001. The revisions to part 225, the clauses at 252.225-7001, Buy American Act and Balance of Payments

Program, and 252.225-7006, Trade Agreements Act, and the provision at 252.225-7005, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, are the result of a General Services Administration Board of Contract Appeals (GSECA) ruling that FAR (hence DFARS) language is contrary to the Trade Agreements Act.

Under the current DFARS, in acquisitions subject to the Trade Agreements Act, products which have been substantially transformed in the United States but do not qualify as domestic end products under the 50 percent component test of the Buy American Act generally are ineligible for award without a waiver. The GSECA considers this contrary to the Trade Agreements Act, which does not prohibit award for products substantially transformed in the United States. A definition for "U.S. made end products" is added at DFARS 225.000-70 and 252.225-7006 to cover products substantially transformed in the United States. However, unlike eligible end products, U.S. made end products, that do not qualify as domestic end products, are not excluded from application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, although the factor will be applied to an acquisition only when it will result in award of a domestic end product.

Item VIII—Duty-Free Entry

The U.S. Customs Service has a new paperless system, for generating duty-free certificates, that requires six elements of information in addition to that currently required by 225.603-70(c)(4)(i), 252.225-7008, and 252.225-7014. The new system is called the Customs Duty Free Management System. The six additional data items are the prime contractor's address and commercial and government entity code, the foreign supplier's address, plus the administrative contracting officer's (ACO) name, telephone number, and code.

The ACO's code is used for electronic recognition in the new system. The Defense Contract Management Area Operations (DCMAO) New York has assigned codes to all Defense Logistics Agency ACOs and, upon request, is assigning codes to other ACOs. The point of contact at DCMAO New York is Mr. William Blanchard, (212) 807-3520, AUTOVON 955-4241.

The U.S. Customs Service will only accept notifications that include the additional information. Otherwise, duty-free certificates will not be issued, and the Department of Defense will have to pay duty on supplies imported into the

United States. The revisions to 225.603-70(c)(4)(i), 252.225-7008, and 252.225-7014 were effective December 19, 1990 as a result of Departmental Letter 90-015, issued on that date.

Item IX—Machine Tools and Valves

This finalizes the interim revisions made in 225.70 by DAC #88-15, Item X, except that paragraph 225.7012(a) is revised to emphasize the prohibition on acquisition of machine tools and valves unless they are of U.S. or Canadian origin.

Item X—Foreign Machine Tools

DAC #88-15 revised the clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools. The replacement pages for DAC #88-16 inadvertently picked up the prior (JAN 1989) version of the clause. This DAC reinstates the DAC #88-15 (JUL 1990) version.

Item XI—Indemnification, Anti-Deficiency Act

FAC #90-3, Item 23, revises FAR 28.311, permitting each agency to set its own conditions for use of the clause at 52.228-7, Insurance—Liability to Third Persons. DFARS subpart 228.3 is revised to prescribe use within DoD of the FAR 52.228-7 clause and the provision at FAR 52.228-6, Insurance—Immunity from Tort Liability.

Item XII—Flexible Progress Payments

The new language introduced by DAC #88-16 for 232.502-1(S-71) had the unintended effect of authorizing use of flexible progress payments in contracts awarded and performed entirely outside the United States. The language in 232.502-1(S-71)(2) has been corrected to preclude use of flexible progress payments in such contracts.

Item XIII—Rent-Free Use of Government Property on Foreign Military Sales

This item was effective February 1, 1991 upon issuance of Departmental Letter 91-002. DFARS subpart 245.4 is revised to permit its rent-free use of U.S. Government property on foreign military sales (FMS) contracts. Section 21(e)(1)(B) of the Arms Export Control Act previously required the Department of Defense (DoD) to establish and recover appropriate charges for use of Government property used on FMS contracts. This requirement was repealed by section 9104 of the fiscal 1990 DoD Appropriations Act (Pub. L. 101-165), effective November 21, 1989.

Contracts awarded on or after November 21, 1989, may require adjustment for reimbursement to a

foreign government for rental use charges assessed against it. When requested to make such an adjustment, contracting officers shall notify the cognizant program office and consult with their legal advisors to ensure that contract modifications do not exceed the amount of rental use charge contained in the affected Letter of Agreements.

Item XIV—Authorization for Contractor Performance of Plant Clearance Functions

Subsection 245.603-70 is revised to modify the requirements for authorizing a contractor to perform plant clearance functions. The requirement for Government plant clearance personnel to be stationed at the contractor's facility has been eliminated. The authorization will now require approval of the department or agency concerned.

Item XV—Editorial Revisions

(a) The list of contracting activities in 202.101(a) is revised to add the U.S. Army Special Operations Command.

(b) Paragraph (a)(2) of section 204.7004-3 is revised by adding the letter "Q."

(c) Section 225.501 is revised by removing the parenthetical reference "see 225.76" in the last sentence. (DAC #88-16 removed subpart 225.76.)

(d) Paragraph 225.7002(c) is revised by removing paragraph (7). (DAC #88-16 removed subpart 225.76.)

(e) The activity address number in Appendix N for OC-ALC/PM is revised by deleting the two-character code "TG."

1. The authority for 48 CFR parts 202, 203, 204, 217, 225, 228, 232, 245, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

Amendments to the DOD FAR Supplement

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101(a) is amended by removing under the category heading "For the Army" the word "and" after the words "U.S. Army Intelligence and Security Command"; by removing the period and adding a semi-colon and the word "and" after the words "U.S. Army, South" and by adding at the end of the listing the words "U.S. Army Special Operations Command."

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 203.104-1 is revised to read as follows:

203.104-1 General.

Except as provided in FAR 3.104-9(f)(2), agencies are not authorized to grant individual deviations to this section. These deviations must be approved using the same procedures in 201.404 for class deviations.

4. Section 203.104-4 is revised to read as follows:

203.104-4 Definitions.

(c)(1) Each order under a Basic Ordering Agreement is a separate procurement subject to all requirements at FAR 3.104.

203.104-5 [Amended]

5. Section 203.104-5 is amended by revising the title to read: "Disclosure, Protection, and Marking of Proprietary and Source Selection Information."

203.104-9 [Removed]

6. Section 203.104-9 is removed.

7. Section 203.170-2 is amended by adding a new paragraph (c) to read as follows:

203.170-2 Policy.

(c) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989 to November 30, 1990. Section 815 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510) continues the suspension of 10 U.S.C. 2397b from December 1, 1990 through May 31, 1991. The clause at DFARS 252.203-7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, should continue to be inserted in solicitations and contracts. However, the provision of the clause that prohibits the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating this provision shall not be applied during the suspension period.

203.571-1 [Amended]

8. Section 203.571-1 is amended by adding in the first sentence between the word "contractors" and the word "from" the words "and subcontractors".

203.571-2 [Amended]

9. Section 203.571-2 is amended in the definition of "Arising out of a contract

with the Department of Defense" by adding in (c) between the word "or" and the word "subcontract" the words "first-tier".

203.571-3 [Amended]

10. Section 203.571-3 is amended by adding in paragraph (a) between the word "contractor" and the word "shall" the words "or subcontractor"; by adding in paragraph (b) between the word "Contractors" and the word "shall" the words "or subcontractors"; and by adding in paragraph (b) between the word "or" and the word "subcontract" the words "first-tier".

203.571-4 [Amended]

11. Section 203.571-4 is amended by adding between the word "contractor" and the word "is" the words "or first-tier subcontractor".

PART 204—ADMINISTRATIVE MATTERS

204.7004-3 [Amended]

12. Section 204.7004-3 is amended by adding in paragraph (a)(2) introductory text, between the letter "P" and the letter "S" the letter and punctuation "Q".

204.7108-3 [Amended]

13. Section 204.7108-3(b) is amended by revising the reference "Appendix C" to read "Section G."

PART 217—SPECIAL CONTRACTING METHODS

14. Subpart 217.1 is revised to read as follows:

Subpart 217.1—Multiyear Contracting

- 217.102 Policy.
- 217.102-2 General.
- 217.103 Procedures.
- 217.103-1 General.

Subpart 217.1—Multiyear Contracting

217.102 Policy.

217.1012-2 General.

(b) The applicable program year is that shown in the DoD Six Year Defense Program.

217.103 Procedures.

217.103-1 General.

(a) *Criteria.* (S-70) 10 U.S.C. 2306(h) and annual DoD authorization and appropriations acts have established the following additional criteria:

(i) The use of such a contract will promote the national security of the United States and will result in substantial savings of the total anticipated costs of carrying out the

program through annual contracts (10 U.S.C. 2306(h)(1)).

(ii) The contract provides for a production rate at not less than minimum economic product rates given the existing tooling and facilities (10 U.S.C. 2306(h)(9)).

(iii) The economic order quantity of the advance acquisition which precedes the multiyear acquisition is funded at least to the limits of the Government's liability (Section 9021, Pub. L. 101-165).

(b) *Limitations.* (S-70) For DoD—

(i) Public Law 90-378 (10 U.S.C. 2306(g)).

(A) DoD may enter into multiyear acquisitions for the following services, even though funds are limited by statute to obligation during the fiscal year in which the contract is executed.

- (1) Operation, maintenance and support of facilities and installations;
- (2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;
- (3) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and
- (4) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

- (1) Does not extend beyond five years;
- (2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(ii) Section 512 of Public Law 91-142.

(A) DoD may enter into multiyear acquisitions for supplies and services required for maintenance and operation of family housing even though funds would otherwise be available only within the fiscal year for which appropriated.

(B) This authority may be used as long as the contract—

- (1) Does not extend beyond four years;
- (2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of multiyear contract for services requires a written determination by the head of the contracting activity (10 U.S.C. 1306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(1) A substantial initial investment in plant or equipment;

(2) The upfront commitment of substantial financial resources for the

assembly, training or transportation of a specialized work force; or

(3) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of—

(A) Any multiyear contract that contains a cancellation ceiling in excess of \$100 million (10 U.S.C. 2306(h)(3));

(B) Any multiyear contract that provides for economic order quantity purchases in excess of \$20 million (Section 9021, Pub. L. 101-165);

(C) Any multiyear contract that includes an unfunded contingent liability in excess of \$20 million (Section 9021, Pub. L. 101-165); or

(D) Any contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of \$20 million in any year (Section 9021, Pub. L. 101-165).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Deputy Assistant Secretary of Defense (Procurement) (DASD(P)) and the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of \$500 million for any system or component thereof unless—

(1) Specifically provided for in a DoD appropriation act (Section 9021, Pub. L. 101-165), and

(2) The Secretary of Defense certifies to Congress that the current six-year defense plan fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to DASD(P).

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (Section 9021, Pub. L. 101-165).

(vii) Do not terminate a multiyear contract under a program approved by Congress without providing a ten-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate (Section 9021, Pub. L. 101-165).

(viii) The Secretary of Defense may ask Congress for relief from any

conditions established by law for that particular procurement program (10 U.S.C. 2306(h)(11)).

(A) A request for relief from the requirement to achieve specific cost savings may be made if it appears, after negotiations with the contractors, that such savings cannot be achieved, but that substantial savings could nevertheless be achieved by using a multiyear contract.

(B) Include in such request details concerning the reasons for requesting use of a multiyear contract as well as details about the negotiated contract terms and conditions.

(C) Forward supporting documentation to DASD(P).

(ix) Departments/agencies also must comply with any other restrictions or notification requirements contained in annual authorization or appropriation acts.

(d) *Cancellation.* (1) State cancellation ceilings in the schedule as a not-to-exceed amount.

PART 225—FOREIGN ACQUISITION

15. Section 225.000-70 is amended by adding paragraph (l) to read as follows:

225.000-70 Definitions.

* * * * *

(l) *U.S. made end product* means an article that (1) is wholly the growth,

product or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

16. Section 225.000-71 is amended by revising the table in paragraph (b) to read as follows:

225.000-71 Policy.

(b) * * *

Step	If yes	
1. Is the acquisition of the product restricted by the Department of Defense (see part 208) or by the Defense Appropriations or Authorization Act (See subpart 225.70.)	The specific restrictions of the Acts must be followed.....	Go to step 2.
2. Is the product being offered a qualifying country end product?.....	Evaluate the offer as set forth in 225.74 (but see step 4).	Go to step 3.
3. Is the product being purchased covered by the Trade Agreements Act? (See subpart 225.4.)	Determine whether the product being offered is an eligible product or a U.S. made end product. If it is not, then purchase of the item may be prohibited (see 225.402). Follow the guidance in 209.170	Go to step 4.
4. Will the contract (if for more than \$100,000) be awarded to a firm controlled by a terrorist nation?		Go to step 5.
5. Apply the Buy American Act as set forth in subpart 225.1.		

17. Section 225.105-70 is amended by adding paragraph (i) to read as follows:

225.105-70 Evaluation procedures.

* * * * *

(i) Because of the component test, the definition of domestic end product for manufactured items under the Buy American Act is more restrictive than the definition for:

(1) U.S. made end product under the Trade Agreements Act (see 225.000-70);

(2) Domestically produced or manufactured products under small business set-asides and under small business-small purchase set-asides (see FAR subpart 19.5); and

(3) Products of small businesses or small disadvantaged businesses (see FAR part 19).

If an end product is a "U.S. made end product," "domestically produced end product," or the product of a small business, but is not a "domestic end product" under this subpart, it is subject to the evaluation factors for nonqualifying country end products.

18. Section 225.109 is amended by adding in paragraph (a)(S-70) at the end of the paragraph before the period the words "or unless the solicitation includes the clause at 252.225-7006, Trade Agreements Act."; and by revising paragraph (d)(S-70) to read as follows:

225.109 Solicitation provisions and contract clauses.

* * * * *

(d)(S-70) The clause at 252.225-7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225-3, Buy American Act—Supplies, and FAR 52.225-7, Balance of Payments Program, unless the solicitation is solely for machine tools (see 225.7012). The contracting officer shall insert the clause at 252.225-7001 in all solicitations and contracts (i) not utilizing small purchase procedures and (ii) for supplies and for services which require the furnishing of supplies (e.g., the leasing of equipment), except as cited in 225.302(S-72)(1).

19. Section 225.401 is revised to read as follows:

225.401 Definitions.

(a) *Eligible product*, instead of the definition at FAR 25.401, means a designated or Caribbean Basin country end product listed at 225.403-70.

(b) *Nondesignated country end product*, as used in this part, means any end product which is not a U.S. made end product or a designated country end product.

20. Section 225.402 is amended by revising paragraph (a)(1)(i), by designating paragraph (C) as paragraph (c) and revising the introductory text of paragraph (c) to read as follows:

225.402 Policy.

(a)(1)(i) For bid evaluation purposes see 225.105-70.

* * * * *

(c) There shall be no purchase of a nondesignated country end product listed in 225.403-70 with an estimated value at or above the dollar threshold determined by the U.S. Trade Representative (see FAR 25.402(a)(1)) which is not a Caribbean Basin country end product except as follows:

* * * * *

21. Section 225.407 is revised to read as follows:

225.407 Solicitation Provision and Contract Clause.

(a)(1) The provision, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate at 252.225-7005, shall be used in lieu of the provision at FAR 52.225-8 in all solicitations in which the Trade Agreements Act clause at 252.225-7006 is used.

(2) The clause at 252.225-7006, Trade Agreements Act, shall be used in lieu of the clause at FAR 52.225-9 and shall be inserted along with the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act.

225.501 [Amended]

22. Section 225.501 is amended by removing in the last sentence of paragraph (a) the parenthetical reference "(see 225.76)".

23. Section 225.603-70 is amended by revising paragraph (c)(4)(i) to read as follows:

225.603-70 Procedures.

(c) * * *

(4) * * *

(i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCMR New York in the format shown below:

TO: Commander, DCMR New York.
ATTN: Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014.

A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225-10 and 252.225-7014 or 252.225-7008. Verification has been made that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted in accordance with 225.603-70(c)(3).

In accordance with 225.603-70(c)(4), the following information is provided:
Prime Contractor Name, Address, and CAGE code:

Prime Contractor Number plus Delivery Order Number, if applicable:

Total Dollar Value of the Prime Contract or Delivery Order:

Expiration Date of the Prime Contract or Delivery Order:

Foreign Supplier Name:

Number of the Subcontractor/Purchase Order for Foreign Supplies:

Total Dollar Value of the Subcontract for Foreign Supplies:

Expiration Date of the Subcontract for Foreign Supplies:

CAO Activity Address number (Appendix N of the DoD FAR Supplement):

ACO Name:

ACO Telephone Number:

ACO Code:

Signature:

Title:

* * * * *

PART 228—BONDS AND INSURANCE

24. Sections 228.311 through 228.311-2 are added to read as follows:

228.311 Solicitation Provision and Contract Clause on Liability Insurance under Cost-Reimbursement Contracts.**228.311-1 Solicitation Provision.**

For DoD, the contracting officer shall insert the provision at FAR 52.228-6, Insurance—Immunity From Tort Liability, in solicitations for research and development when a cost reimbursement contract is contemplated, unless the head of the

contracting activity waives the requirement for use of the clause at FAR 52.228-7, Insurance—Liability to Third Persons.

228.311-2 Contract Clause.

For DoD, the contracting officer shall insert the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

PART 232—CONTRACT FINANCING

25. Section 232.502-1 is amended by removing paragraph (S-71)(2)(ii)(C), by redesignating the existing paragraph (S-71)(2)(ii)(D) as (S-71)(2)(ii)(C), and by revising paragraph (S-71)(2)(iii) to read as follows:

232.502-1 Use of Customary Progress Payments.

(S-71) * * *

(2) * * *

(iii) Do not use flexible progress payments for undefinitized contract actions, contracts awarded through sealed bidding, or contracts to be awarded and performed entirely outside the United States, its possessions or territories.

* * * * *

PART 245—GOVERNMENT PROPERTY

26. Section 245.401 is revised to read as follows:

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent-free basis.

27. Section 245.405 is amended by revising paragraph (b); by removing paragraph (c); by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e); and by revising newly redesignated paragraphs (c), (d), and (e) to read as follows:

245.405 Contracts with Foreign Governments or International Organizations.

* * * * *

(b) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(c) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges or nonrecurring recoupments shall be

assessed that foreign government or international organization for the use of such property.

(d) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Assistance Agency for particular sales which are consistent with paragraph (a)(2) of this section.

(e) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

28. Section 245.603-70 is amended by revising paragraph (1) to read as follows:

245.603-70 Contractor Performance of Selected Plant Clearance Duties and Responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only if:

(i) The volume of plant clearance actions warrants performance by the contractor; and

(ii) The authorization is approved by the department or agency concerned.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

29. Section 252.203-7001 is amended by revising the clause date to read "(FEB 1991)" in lieu of "(MAR 1989)"; by adding in paragraph (a) between the word "or" and the word "subcontract" the words "first-tier"; by revising paragraph (b); by adding in paragraph (c)(1) between the word "or" and the word "subcontract" the words "first-tier"; by adding in paragraph (c)(2) between the word "or" and the word "subcontract" the words "first-tier"; by removing in paragraph (f) the words and punctuation "including this paragraph (f)"; by adding in paragraph (f) between the word "all" and the word

"subcontracts" the words "first-tier" to read as follows:

252.203-7001 Special Prohibition on Employment.

(b) 10 U.S.C. 2408 prohibits a person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense from working in a management or supervisory capacity on any defense contract or first-tier subcontract, or serving in various other capacities for a defense contractor or first-tier subcontractor, for up to five (5) years from the date of conviction, as set forth in paragraph (c) of this clause. Defense contractors and first-tier subcontractors are subject to a criminal penalty of not more than \$500,000 if they are convicted of knowingly employing a person under a prohibition or allowing that person to serve in violation of 10 U.S.C. 2408.

30. Section 252.203-7002 is amended by changing the date of the clause from "[APR 1988]" to "(FEB 1991)" and by adding a new paragraph (b)(4) to read as follows:

252.203-7002 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees.

(b) * * *

(4) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989 to November 30, 1990. Section 815 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510) continues the suspension of 10 U.S.C. 2397b from December 1, 1990 through May 31, 1991. The provision of this clause that prohibits the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating this provision shall not be applied during the suspension period.

31. Section 252.225-7001 is revised to read as follows:

252.225-7001 Buy American Act and Balance of Payments Program.

As prescribed at 225.109(d)(S-70), insert the following clause:

Buy American Act and Balance of Payments Program (JAN 1991)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products. For the purpose of this clause—

(1) "Components" means those articles, materials, and supplies directly incorporated into end products.

(2) "Qualifying country" means any country set forth in DFARS 225.7403.

(3) "Nonqualifying country end product" means an end product which is not a domestic or qualifying country end product.

(4) "Qualifying country components" means an item mined, produced, or manufactured in a qualifying country.

(5) "End products" means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(6) "Domestic end product" means (i) an unmanufactured end product which has been mined or produced in the United States, or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (iii) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) "Qualifying country end product" means (i) an unmanufactured end product mined or produced in a qualifying country, or (ii) an end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products unless, in its offer, it specified delivery of other end products in the provision entitled "Buy American Act and Balance of Payments Program Certificate," or in the provision entitled "Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate." An offer certifying that a qualifying country end product will be supplied requires the Contractor to supply a qualifying country end product or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR part 25 and DFARS part 225.

(d) The offered price of nonqualifying country end products must include all applicable duty. Generally, when the Buy American Act is applicable, each offer of a nonqualifying country end product shall be

adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

32. Section 252.225-7005 is revised to read as follows:

252.225-7005 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed at 225.407(a)(1), insert the following provision:

BUY AMERICAN ACT—TRADE AGREEMENTS ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 1991)

(a) The Offeror hereby certifies that each end product, except the end products listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(b) Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, designated country end products and Caribbean Basin country end products over other end products. In order to obtain such preference in the evaluation, it is necessary that offerors identify and certify, below, those end products that are qualifying country end products, designated country end products, or Caribbean Basin country end products and those end products which are U.S. made end products but not domestic end products. Offerors must also identify, below, those nondesignated country end products which are not qualifying country end products or Caribbean Basin country end products.

(1) The Offeror certifies that the following supplies qualify as "U.S. made end products" as defined in the clause entitled "Trade Agreements Act," but do not meet the definition of "domestic end product" as defined in the clause entitled "Buy American Act and Balance of Payments Program."

(Insert line item no.)

(2) The Offeror certifies that the following supplies are "qualifying country end products" as defined in the clause entitled "Buy American Act and Balance of Payments Program."

(Insert line item no.)

(Insert country of origin)

(3) The Offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Trade Agreements Act."

(Insert line item no.)

(Insert country of origin)

(4) The Offeror certifies that the following supplies qualify as "Caribbean Basin Country end products" as that term is defined in the clause entitled "Trade Agreements Act."

(Insert line item no.)

(Insert country of origin)

(5) Other nondesignated country end products. The offeror identifies the following supplies as nondesignated country end products which are not certified in paragraphs (b)(2) or (4) of this provision as qualifying country end products or Caribbean Basin country end products.

(Insert line item no.)

(Insert country of origin)
(End of provision)

33. Section 252.225-7006 is revised to read as follows:

252.225-7006 Trade Agreements Act.

As prescribed at 225.407(a)(2), insert the following clause:

Trade Agreements Act (JAN 1991)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) and the Caribbean Basin Initiative as provided for in Executive Order 12280 by providing a preference to U.S. made end products and designated country end products over nondesignated country end products, except for nondesignated country end products which are qualifying country end products or Caribbean Basin end products. For the purpose of this clause—(1) "End product" means those articles, materials, and supplier to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(2) "Qualifying country end product" is defined in the clause entitled "Buy American Act and Balance of Payments Program."

(3) "Designated country" means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed in section 25.401 of the Federal Acquisition Regulation (FAR).

(4) "Designated country end product" means an article that (i) is wholly the growth, product, or manufacture of the designated country, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(5) "Caribbean Basin country end product" means (i) An article that (A) is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially

transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. (ii) The term excludes products which are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act under 19 U.S.C. 2703(b). These exclusions presently consist of (A) textiles and apparel articles which are subject to textile agreements; (B) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (C) tuna, prepared or preserved in any manner in airtight containers; (D) petroleum, or any product derived from petroleum; and (E) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(6) "U.S. made end product" means an article which is (i) wholly the growth, product or manufacture of the United States, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(7) "Nondesignated country end products" means any end product which is not a U.S. made end product or a designated country end product.

(8) "United States" means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees that there will be delivered under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, designated country, Caribbean Basin country or other nondesignated country end products in the provision entitled Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate. Offerors may not supply a nondesignated country end product unless it is a qualifying country end product or a Caribbean Basin country end product, or a national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)). An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR part 25 and DFARS part 225.

(d) The offered price of supplies listed in paragraph (b)(1) (U.S. made but not domestic) or in paragraph (b)(5) (other nondesignated country end products) of the provision entitled "Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate" must include all applicable duty. The offered price of qualifying country end products, designated country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, should not include custom fees or duty.

(End of clause)

34. Section 252.225-7008 is amended by revising the clause date to read "(DEC 1990)" in lieu of "(NOV 1990)"; and by revising paragraph (h)(1) and paragraph (h)(4) to read as follows:

252.225-7008 Duty-Free Entry—Qualifying Country End Products and Supplies.

* * * * *

(h) * * *

(1) Prime contractor name, CAGE code, address, and prime contract number plus delivery order number if applicable;

* * * * *

(4) Foreign supplier name and address;

* * * * *

35. Section 252.225-7014 is amended by revising the clause date to read "(DEC 1990)" in lieu of "(APR 1990)" and by revising paragraph (c)(1) and paragraph (c)(4) to read as follows:

252.225-7014 Duty-Free Entry—Additional Provisions.

* * * * *

(c) * * *

(1) Prime contractor name, CAGE code, address, and prime contract number plus delivery order number, if applicable;

* * * * *

(4) Foreign supplier name and address;

* * * * *

Appendix N to Chapter 2—[Amended]

36. Appendix N to Chapter 2 is amended by removing from the "Department of the Air Force" the code "TG" from the code "F34601, SD, TA, TG."

Adoption of Interim Rules as Final Rules

The Interim Rule published on January 27, 1989 (54 FR 4246) as amended on December 29, 1989 (54 FR 53612) and the Interim Rule published on July 24, 1990 (55 FR 30154) are adopted as final rules with the following changes:

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.1070 through 219.1071 [Removed]

37. Sections 219.1070 through 219.1071 are removed.

38. Sections 219.1006 through 219.1007-70 are added to read as follows:

219.1006 Procedures.

(a) For reporting requirements, see 204.675.

(b) *Designated Industry Groups.* (1) When use of small business set-asides is suspended for the four designated industry groups—

(i) The procedures under 219.501 (g), and (g)(S-70) through (g)(S-73) are waived;

(ii) The exceptions at 219.502-72(b) (1), (2), and (3) do not apply, and the acquisitions shall be considered for small disadvantaged business set-asides; and

(iii) The evaluation preference at 219.7001 shall not be applied.

(2) After periodic review of DoD performance, DoD may direct

reinstatement of the use of small business set-asides as necessary to meet prescribed goals. Military Departments and defense agencies shall not reinstate small business set-asides unless directed by DoD.

219.1007 Solicitation Provision.

219.1007-70 Contract Clause.

The clause at 252.219-7007, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, shall not be used in acquisitions in the four designated industry groups.

PART 225—FOREIGN ACQUISITION

225.7002 [Amended]

39. Section 225.7002 is amended by removing paragraph (c)(7).

40. Section 225.7012-2 is amended by revising paragraphs (a) and (b) (1) and (2) introductory text to read as follows:

225.7012-2 Authorization Act Restrictions (FY 1990-1991).

(a) In accordance with 10 U.S.C. 2507, do not purchase machine tools or powered and nonpowered valves identified in 225.7012-1 unless they are

of U.S. or Canadian origin, or unless one or more of the exceptions in paragraph (b) of this subsection applies.

(b) Exceptions.

(1) The restriction in paragraph (a) of this subsection is waived for procurements of less than \$25,000 when simplified small purchase procedures are used.

(2) The Head of the Agency may waive the restriction in paragraph (a) of this subsection for other procurements on a case-by-case basis if any of the following apply:

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219-7012 through 252.219-7014 [Removed and Reserved]

41. Sections 252.219-7012 through 252.219-7014 are removed and reserved.

[FR Doc. 91-4566 Filed 3-1-91; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 799
Multi-Substance Testing for
Developmental and Reproductive
Toxicity, and Neurotoxicity; Proposed
Rules

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 799
[OPTS-42123; FRL 3770-6]
**Multi-substance Rule for the Testing of
Developmental and Reproductive
Toxicity; Proposed Rule**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers and processors of the 12 substances listed in this notice to conduct testing for developmental and/or reproductive toxicity.

DATES: Submit written comments on or before May 3, 1991. If persons request an opportunity to submit oral comments by April 18, 1991, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VIII. of this preamble.

ADDRESSES: Submit written comments identified by the document control number [OPTS-42123] in triplicate to: TSCA Public Docket Office (TS-793),

Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action, with any confidential business information deleted, is available for inspection at the above address from 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing a test rule under TSCA section 4 to obtain developmental and/or reproductive toxicity data for the 12 substances designated in this rule.

I. Introduction
A. Background

Section 4 of TSCA authorizes EPA to require testing of chemical substances and mixtures whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to human health or the environment, but for which

existing data are inadequate to reasonably determine or predict such effects. In this rule, 12 substances which are suspected developmental and/or reproductive toxicants are being proposed for developmental and/or reproductive toxicity testing. Refer to Table 1 for a list of the substances, their testing requirements, and their available percent purities. These substances were selected for consideration under this endpoint rule because EPA believes the available data indicate that they may present an unreasonable risk of injury to human health.

The substances selected as candidates for this rule met one or more of the following criteria:

(1) EPA received a TSCA section 8(e) notice of substantial risk.

(2) Available screening level data or other data on the substances provide suggestive evidence that the substance may be toxic and more definitive data are needed to adequately assess risk.

(3) Available data on structurally related substances provide suggestive evidence that the substance may be toxic.

(4) Adequate developmental toxicity data on one mammalian species are available, but testing in an additional mammalian species is needed to adequately assess risk.

TABLE 1.—PROPOSED TESTING AND TEST STANDARDS FOR DESIGNATED SUBSTANCES

Chemical/CAS No.	Testing requirement(s)	Guideline requirement(s)	Minimum percent purity	Docket No. (OPTS)
acrylonitrile (107-13-1)	Developmental: oral	1798.4900	99.0	42123/42124
p-aminophenol (123-30-8)	Developmental: oral	798.4900	98.0	42123/42125
bromochloromethane (74-97-5)	Reproductive: oral	798.4700	99.0	42123/42120
carbon disulfide (75-15-0)	Developmental: inhalation	798.4350	99.9	42123/42126
	Reproductive: inhalation	798.4700	99.9	
dodecylphenol (27193-86-8)	Developmental: oral	1798.4900	99.5	42123/42127
2-ethylhexanol (104-76-7)	Developmental: oral	1798.4900	99.0	42123/42087C
hexadecanoic acid (57-10-3)	Developmental: oral	798.4900	99.0	42123/42128
o-hydroxyphenol (120-80-9)	Developmental: oral	798.4900	99.0	42123/42129
2-methylpropanoic acid (79-31-2)	Developmental: oral	798.4900	99.0	42123/42130
methyl ester octanoic acid (111-11-5)	Developmental: oral	798.4900	99.0	42123/42131
terephthalic acid (100-21-0)	Reproductive: oral	798.4700	98.0	42123/42132
2,4-toluenediamine (95-80-7)	Developmental: oral	798.4900	98.0	42123/42133
	Reproductive: oral	798.4700	98.0	

¹Testing will be required in a mammalian species other than the rat.

B. Test Development Under TSCA

Under section 4(a) of TSCA, EPA shall, by rule, require testing of a substance to develop appropriate test data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules which were

published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

In evaluating the testing needs for these substances, EPA considered the available published and unpublished information on the toxicity, exposure, and production of these substances. From its evaluation of these data, EPA is proposing specific health effects testing for these substances under TSCA

section 4(a)(1)(A) and for one substance under both section 4(a)(1)(A) and (B).

EPA will continue to evaluate the need for this type of testing of additional substances and will amend this rule as necessary to require such testing. EPA intends to identify future candidates for this rule from its chemical screening program, TSCA section 8(e) data, Premanufacture Notices, Structure Activity Relationship data, nominations

from other EPA programs, and Interagency Testing Committee recommendations, among others.

In addition, elsewhere in this issue of the Federal Register, EPA is proposing another TSCA section 4 multi-substance test rule. That rule requires neurotoxicity testing of 10 substances (none of which are the same as those included in this notice). The codified portion of the proposed rule for neurotoxicity is written as an amendment to the codified portion of this rule. For future multi-substance rules, EPA plans to prepare amendments to the combined proposed section of the CFR (i.e., § 799.5050). By so doing, all multi-substance rules will be listed in a single table, and all test requirements (health, environmental, chemical fate, etc.) for a substance would be in a single location. EPA believes this will be advantageous for those subject to test rules under TSCA section 4 and will simplify and aid in their monitoring and compliance.

II. Review of Available Data

A. Production/Use/Exposure

1. *Acrylonitrile*. An estimated 2.5 billion pounds of acrylonitrile are produced annually in the United States (Ref. 1). Acrylonitrile is used in the manufacture of acrylic and monoacrylic fibers. It is also used in the manufacture of resins (Ref. 1).

EPA believes that exposure to acrylonitrile may result due to the conditions under which the large volume of this substance is manufactured, processed, and disposed. For example, according to the National Occupational Exposure Survey (NOES) (1981 through 1983), an estimated 61,500 workers at more than 1,400 plant sites may be exposed to acrylonitrile during sampling, maintenance activities, clean-up of spills, drumming, and bulk loading of the final product (Ref. 1).

In addition, worker and general population exposure may occur as a result of release and/or disposal of over 11 million pounds/year (Refs. 1 and 2). Additional information on potential exposures are discussed in References 1 and 2.

2. *p-Aminophenol*. An estimated 2000 pounds of *p*-aminophenol are produced annually in the United States, while more than 1 million pounds are imported (Ref. 3). *p*-Aminophenol is used as a dye intermediate and as an oxidative dye, particularly for dyeing feathers and fur (Ref. 3).

According to the NOES survey of 1984, an estimated 375 workers may be exposed to *p*-aminophenol (Ref. 49). In addition, *p*-aminophenol is used as a

developing agent for photographic processes (Ref. 3). As such, there may be consumer exposure. An estimated 800,000 to 2.2 million consumer photohobbyists who develop their own film and prints may be exposed to *p*-aminophenol in developers (Ref. 4). EPA believes that many users will immerse both hands in developing solutions without the benefit of gloves (Ref. 13). For a more detailed explanation of typical exposure during developing, refer to Hydroquinone; Final Test Rule (50 FR 53145; December 30, 1985) (Ref. 4).

3. *Bromochloromethane*. The amount of bromochloromethane produced annually in the United States and imported is claimed as confidential business information (Ref. 5). Bromochloromethane is used as a fire extinguishing agent and explosion suppressing agent in area protection systems, and as a solvent or sink/float separation medium (Ref. 6).

More than 100 workers are potentially exposed dermally and via inhalation during the manufacture and use of bromochloromethane as an explosion suppressant in area systems (Ref. 6). General population exposure may also occur as a result of air emissions. More than 200,000 pounds of bromochloromethane are potentially released from one site through air emissions from receivers, storage, and vent scrubbers (Ref. 6). This release is estimated to result in human exposures of 75 to 4,320 mg/year (Ref. 35).

4. *Carbon disulfide*. An estimated 360 million pounds of carbon disulfide are produced annually in the United States (Ref. 5). Carbon disulfide is used in the manufacture of carbon tetrachloride, rayon, cellophane, and rubber chemicals, and is also produced as a by-product from the manufacture of carbon black (Ref. 7 and 47).

EPA believes that there may be worker exposure to this substance based on data from the NOES survey. More than 44,000 workers are potentially exposed to carbon disulfide via inhalation in a variety of occupations including janitors, chemical, health, engineering, and electronic technicians, and machine operators, among others (Ref. 47). EPA believes that exposure to the substance will result due to the conditions under which the large volume of carbon disulfide is manufactured, processed, used, and disposed.

In addition, general population exposure also exists through manufacture and disposal. According to the 1988 Toxic Release Inventory (TRI), 88 manufacturing and processing facilities reported estimated total air

releases of more than 82 million pounds of carbon disulfide (Ref. 47). Over 150,000 pounds of carbon disulfide was transferred to waste water treatment (WWT) plants from industrial facilities for treatment, while more than 37,000 pounds was released directly into streams. For more information on the exposure potential of carbon disulfide, see Reference 47.

5. *Dodecylphenol*. An estimated 60.7 million pounds of dodecylphenol are produced per year (Ref. 8). Dodecylphenol is used as an intermediate in the manufacture of calcium phenate salts and alkyl phenol ethoxylates (Ref. 8).

During manufacture of dodecylphenol, calcium phenate salts, and dodecylphenol ethoxylates, more than 100 workers may be exposed to dodecylphenol during bulk transfer from tank cars to storage tanks, sampling, quality control analysis, and maintenance, among other activities (Ref. 8). Dermal exposures may range from 1,300 to 3,900 mg/day if gloves are not worn (Ref. 8).

Based on modeling data of two stream flows, releases of dodecylphenol from manufacturing through on-site WWT are estimated to result in human drinking water exposures of 0.46 to 7.5 mg/year (Ref. 9). Releases of dodecylphenol from industrial use through on-site WWT at two streamflows are estimated to result in drinking water exposures of 0.69 to 11 mg/year (Ref. 9).

Because of expected strong sorption of dodecylphenol on WWT sludges, 90 percent of the total water release is estimated to be sorbed to sludge and subsequently landfilled (Ref. 9). If this sludge went to unrestricted landfills, there could be a maximum exposure to individuals of 27 mg/year from groundwater (Ref. 9), assuming the dodecylphenol migrates from the sludge to the groundwater in one year. The extent to which this may occur is uncertain due to the strong sorption of the dodecylphenol on the sludge.

6. *2-Ethylhexanol*. An estimated 570 million pounds of 2-ethylhexanol are produced annually for intermediate uses and for merchant sale (Ref. 5). It is estimated that 11,550 to 45,000 workers are potentially exposed to 2-ethylhexanol or products containing 2-ethylhexanol (Ref. 10). EPA believes that exposure to the substance will result due to the conditions under which the large volume of 2-ethylhexanol is manufactured, processed, distributed in commerce, and used.

In addition, consumer and general population exposure also exists through disposal. 2-Ethylhexanol has been

detected in a concentration range of 3 to 5 ppb in the Delaware River, a major source of drinking water for many surrounding cities (Ref. 10). The use of 2-ethylhexanol in defoaming agents for the manufacture of paper products, and its use as a lubricant, may also contribute to environmental and general population exposure (Ref. 10). For more information on the exposure potential for 2-ethylhexanol, refer to the 2-Ethylhexanol; Proposed Test Rule (51 FR 45487; December 19, 1986).

7. *Hexadecanoic acid*. An estimated 9.4 million pounds of hexadecanoic acid are produced annually in the United States (Ref. 11). Hexadecanoic acid is produced and used in the manufacture of soaps/detergents, lube oils, waterproofing, and metallic palmitates (Ref. 11).

According to the NOES survey of 1988, National Institute for Occupational Safety and Health (NIOSH) estimates that more than 50,000 workers may be potentially exposed to hexadecanoic acid in the workplace (Ref. 28). Potential worker exposure may occur during chemical manufacture and use as an intermediate during sampling, drumming, and transferring to reactors. Workers may also be exposed during soap and lube oil processing and use. There is potential for inhalation exposure to particulates if the substance is manufactured and handled as a powder. Potential inhalation exposure could be up to 150 mg/day, while dermal exposure could be up to 3,900 mg/day (Ref. 28).

In addition, millions of consumers and tens of thousands of janitors are expected to be exposed dermally to hexadecanoic acid from its use in a wide variety of commercial and consumer products which involve skin contact (Refs. 11 and 12). Exposure estimates range from 50 mg/year for diluted floor polish to 3,700 mg/year for liquid dishwashing detergent (Ref. 11). Refer to Diethylene Glycol Butyl Ether and Diethylene Glycol Butyl Ether Acetate, Proposed Test Rule (51 FR 27880), for further information on typical exposure from cleaning products (Ref. 12).

Monitoring data revealed maximum concentrations of hexadecanoic acid in industrial effluents from 1.5 to 33,563 ppm (Ref. 11). Human drinking water exposures range from 0.02 mg/year for estimated release from manufacture of soaps and detergents to 12,033 mg/year estimated from monitoring data from the paint and ink manufacturers (Ref. 11). For further information on exposure to hexadecanoic acid, see Reference 11.

8. *o-Hydroxyphenol*. The annual production and importation volume of *o*-

hydroxyphenol is approximately 10 million pounds (Ref. 5). *o*-Hydroxyphenol is used as an intermediate in the production of *t*-butyl catechol (an antioxidant), adhesives, and oxidation bases for dyeing furs. It is also formulated as a developer for black and white films (Ref. 13).

Dermal exposure to *o*-hydroxyphenol is estimated to range from 600 to 4,000 mg/day during manufacturing processes (Ref. 13). During manufacture of *t*-butyl catechol and developer, worker exposure to particulates may occur via the dermal route in transferring solid *o*-hydroxyphenol. More than 100 workers may be exposed to concentrations of 1,000 to 4,000 mg/day, while an estimated 600 workers may be exposed in packaging the liquid developer at concentrations of 100 to 800 mg/day (Ref. 13).

Because *o*-hydroxyphenol is used as a component in developers, consumer exposure may also occur. Photohobbyist exposure to *o*-hydroxyphenol is expected to be comparable to that for *p*-aminophenol as discussed in Unit II.A.2 of this preamble.

9. *2-Methylpropanoic acid*. The amount of 2-methylpropanoic acid produced annually in the United States and imported is claimed as confidential business information (Ref. 5). 2-Methylpropanoic acid is manufactured and used as an intermediate in the manufacture of varnish and ethers for solvents (Ref. 14) and in the leather industry as a tanning and delimiting agent (Ref. 28). According to the NOES survey of 1988, more than 5,000 workers may be exposed in the workplace to 2-methylpropanoic acid (Ref. 34). Workers may be potentially exposed during chemical manufacture and use as an intermediate during sampling, drumming, and transfer to reactors (Ref. 28). During use in leather tanneries, worker exposure may occur during transfer of components to mixing drums, mixing, transfer to dyeing wheels, operation of dyeing wheels, and clean-up (Ref. 28). Inhalation exposure is estimated to be up to 56 mg/day, while dermal exposure is estimated to be up to 3,900 mg/day (Ref. 28).

Monitoring data revealed maximum concentrations of the substance in the effluents at 9 industrial sites ranging from 8.6 to 14,827 ppm (Ref. 14). General population exposure through drinking water may occur at a range of 0.01 to 14,348 mg/year for estimated release from manufacture of ethers and monitoring data from the organic chemical manufacturers (Ref. 14).

10. *Methyl ester octanoic acid*. The amount of methyl ester octanoic acid produced annually in the United States

and imported is claimed as confidential business information (Ref. 5). Methyl ester octanoic acid is produced and used in the synthesis of dyes and ore separators (Ref. 46).

More than 350 workers are estimated to be exposed to methyl ester octanoic acid (Ref. 28). Potential worker exposure may occur during manufacturing and use as a chemical intermediate during sampling, drumming, and transfer to reactors. Exposure to vapor has been estimated to be 15 mg/day, while dermal exposure is estimated to be 3,900 mg/day (Ref. 28).

11. *Terephthalic acid*. An estimated 2.9 billion pounds of terephthalic acid are produced annually in the United States (Ref. 15). Terephthalic acid is used as an intermediate in the manufacture of polyethylene terephthalate (PET) resins. Polymer-grade terephthalic acid is used to make cookware, amorphous nylon used to make plastic autobody parts, solvent-free coating powders, hot-melt adhesives, wire enamels, motor oils and hydraulic fluids, and high performance, low temperature plasticizers; it is also used in electronic applications.

General population exposure to terephthalic acid may occur as a result of air emissions from storage vents, unloading, and transfers during manufacture and use (Ref. 15). Average releases for seven manufacturing facilities are estimated at 41,000 kg/year/site, while user facilities involved in the manufacture of plastics range from 430 to 14,000 kg/site/year based on 1987 TRI data (Ref. 15).

General population exposure may also occur as a result of water releases from disposal of filtrate and decanted liquids and during manufacturing and purification processes (Ref. 15). The average water releases from users of terephthalic acid are estimated based on the 1987 TRI data to range from 0 to 3,000 kg/year/site (Ref. 15). The largest release to a Publicly-Owned Treatment Works (POTW) is 167,000 kg/year/site from a facility which recycles PET bottles to produce fibers (Ref. 15).

In the Federal Register of December 10, 1990 (55 FR 50687) EPA deleted terephthalic acid from the list of toxic substances under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986. By delisting this substance, EPA is relieving facilities of their obligation to report releases of terephthalic acid that occurred during the 1990 calendar year, and thereafter. This relief applies only to reporting requirements under

section 313 of EPCRA. If the proposed testing of this substance under TSCA section 4 provides EPA with evidence that terephthalic does meet the section 313 listing criteria, EPA would immediately initiate rulemaking to add terephthalic acid back to the EPCRA section 313 list.

12. *2,4-Toluenediamine*. An estimated 450 million pounds of 2,4-toluenediamine are produced annually in the United States (Ref. 16). 2,4-Toluenediamine is used as an intermediate in the production of toluene diisocyanate and in dyes used for textiles, leather, and fur (Ref. 16).

EPA believes that exposure to 2,4-toluenediamine will result due to the conditions under which the large volume of this substance is manufactured and disposed. An estimated 750 workers are potentially exposed to 2,4-toluenediamine via inhalation during routine process attention, sampling, maintenance, non-routine spills or leaks, and loading of containers to be shipped off-site, and as a result of fugitive emissions from pumps and clean up operations (Ref. 16). According to NIOSH figures, 2,4-toluenediamine levels in the workplace air may range from 0.001 to 0.415 ppm (Ref. 16).

The general population may also be exposed to 2,4-toluenediamine through plant emissions. According to data on toluene diisocyanate manufacture compiled under the Resource Conservation and Recovery Act, more than 365,000 pounds/year of 2,4-toluenediamine are released from manufacturing facilities (Refs. 16 and 17). However, this release figure is based on 1977 production volume data of 407 million pounds and would be expected to be slightly greater given the current production volume of 450 million pounds. For further information on the exposure potential of 2,4-toluenediamine, refer to References 16 and 17.

B. Health Effects

1. *Acrylonitrile*. Murray et al. (Ref. 18) examined the developmental toxicity of ingested and inhaled acrylonitrile in rats. Rats were exposed from day 6 through 15 of gestation to 10, 25, or 65 mg/kg/day by gavage or to 40 or 80 ppm for 6 hours/day via inhalation. Exposure by gavage to doses as low as 25 mg/kg resulted in a dose-related decrease in fetal body weight and increase in the incidence of delayed ossification, as well as a variety of malformations. Similar malformations were seen after inhalation of 40 ppm, which was the lowest dose tested. The lowest observed adverse effect level (LOAEL) for developmental toxicity was 25 mg/kg,

and the no observed adverse effect level (NOAEL) was 10 mg/kg.

Willhite et al. (Refs. 19 and 20) gave hamsters an intraperitoneal injection of acrylonitrile on day 8 of gestation. Developmental toxicity was evident after exposure to 1.51 mmol/kg (80 mg/kg) as manifested by increased resorptions and malformations, including encephalocoele and fused or bifurcated ribs.

2. *p-Aminophenol*. Kavlock (Ref. 21) tested 27 substituted phenols using a modified Chernoff/Kavlock screening assay for developmental toxicity. Rats were administered 100, 333, 667, or 1,000 mg/kg of *p*-aminophenol by oral intubation on day 11 of gestation. Exposure to *p*-aminophenol resulted in decreased viability potencies and malformations involving the limbs, tail, and urogenital system.

3. *Bromochloromethane*. Torkelson et al. (Ref. 22), exposed groups of 10 male and 10 female guinea pigs and 2 male and 2 female rabbits to concentrations of 0, 490, or 1,010 ppm bromochloromethane 7 hours/day, 5 days/week for 79 to 82 exposures in 114 days. In the male guinea pig at 1,010 ppm, histological examination of the testes showed decreased spermatogenesis in the tubules, with fibrosis in numerous tubules and only the germinal epithelium remaining in other tubules. In the male rabbit at 1,010 ppm, histological examination showed testicular tubule changes, characterized by decreased spermatogenesis with replacement fibrosis occurring in the tubules.

4. *Carbon disulfide*. In a range finding study, pregnant rabbits were exposed via inhalation to concentrations of 100, 300, 1,000, or 3,000 ppm carbon disulfide for 6 hours/day on days 6 through 19 of gestation (Ref. 36). All animals exposed to 3,000 ppm died. Maternal and developmental toxicity were evident at 1,000 ppm; developmental toxicity was manifested as an increase in resorptions and a reduction in mean litter size.

Tabacova et al. (Ref. 23) exposed maternal (F0) rats to carbon disulfide vapor throughout gestation. Exposure to 100 and 200 mg/m³ resulted in a dose-related reduction in fetal weight and a high incidence of malformations in the first generation (F1) progeny. After reaching maturity, the F1 females were mated; these dams received no carbon disulfide exposure during pregnancy. Malformations of the same type as those found in the F1 at 100 and 200 mg/m³ were observed in second generation (F2) progeny. In a subsequent study, Tabacova et al. (Ref. 24) exposed F0 and F1 dams to carbon disulfide vapor throughout the gestation period only.

Exposure of the F0 dams to concentrations of 100 and 200 mg/m³ resulted in a reduction in fetal body weight and a high incidence of malformations in the F1 progeny; malformations were not observed after exposure to 0.03 or 10 mg/m³. However, the exposure of the F1 dams to 0.03 or 10 mg/m³ during pregnancy resulted in a high incidence of malformations in the F2 pups; the malformations were of the same type as observed after exposure to higher concentrations of carbon disulfide. In addition, at the higher exposure levels, the incidence of the malformations in the F2 fetuses exceeded that in F1 fetuses by 150 percent.

In addition to the prenatal effects noted above, the studies of Tabacova et al. (Refs. 23 and 24) provided evidence of postnatal developmental toxicity. In the first study, exposure of F0 dams to 100 and 200 mg/m³ during gestation resulted in a reduction in postnatal viability and body weight in the F1 pups and behavioral changes in both the F1 and F2 (F2 pups received no supposed exposure) pups (Ref. 23). In the second study, behavioral abnormalities were observed in the F1 pups after exposure to 10 mg/m³, and in the F2 pups after exposure to 0.03 or 10 mg/m³.

A report by Cai and Bao (1981) reported increased incidences of menstrual disturbances and of pregnancy toxemia in rayon workers (Ref. 48). In the report, evidence was also presented that carbon disulfide can be secreted in mothers' milk.

Lancranjan et al. (Ref. 45) studied testicular changes in workers in a factory who had been exposed to carbon disulfide at average concentrations of 13 to 26 ppm. Disturbances of sexual dynamics were observed in 78 percent of the patients, decreased libido and erection difficulty being the most common problems. Semen analysis revealed that the workers had significantly higher frequencies of asthenospermia, hypospermia, and teratospermia.

5. *Dodecylphenol*. A developmental toxicity study was conducted in rats via gavage and established both a LOAEL of 100 mg/kg and a NOAEL of 20 mg/kg (Ref. 25). At both 100 and 300 mg/kg there was a significant increase in the incidence of delayed ossification. At 300 mg/kg, there was a significant increase in resorptions, a concomitant significant reduction in litter size and mean fetal body weight, and a significant increase in a variety of malformations.

6. *2-Ethylhexanol*. Pregnant rats were administered 2-ethylhexanol by gavage for 10 days in daily doses of 130, 650, or

1.300 mg/kg body weight/day (Ref. 26). At the highest dose level, maternal toxicity, including death, was observed. Fetotoxicity was also observed, substantiated by an increase in resorptions and a reduction in mean fetal body weight. There was also a higher frequency of fetuses exhibiting soft tissue variations, skeletal malformations, and retardations. Maternal toxicity and fetotoxicity was also observed in the 650 mg/kg body weight/day group, substantiated by a reduction in mean fetal body weight and an increase in the number of skeletal variations and retardations observed.

7. *Hexadecanoic acid*. There are no developmental toxicity studies conducted with hexadecanoic acid; however, concern for the potential developmental toxicity of hexadecanoic acid is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Twelve short chain carboxylic acids were tested in an in vitro screen using a whole rat embryo culture system; 11 of the carboxylic acids, including octanoic acid, exhibited a spectrum of malformations similar to valproic acid, a known human teratogen (Ref. 27).

8. *o-Hydroxyphenol*. Kavlock (Ref. 21) tested 27 substituted phenols using a modified Chernoff/Kavlock screening assay for developmental toxicity. Rats were administered 100, 333, 667, or 1,000 mg/kg of *p*-aminophenol by oral intubation on day 11 of gestation. Exposure to *p*-aminophenol resulted in decreased viability potencies and malformations involving the limbs, tail, and urogenital system.

9. *2-Methylpropanoic acid*. There are no developmental toxicity studies conducted with 2-methylpropanoic acid; however, concern for the potential developmental toxicity of 2-methylpropanoic acid is based upon its structural analogy to 2-ethylhexanoic acid which has been found to be developmentally toxic to rats (Ref. 42) and valproic acid, a known human teratogen (Refs. 27 and 33).

10. *Methyl ester octanoic acid*. There are no developmental toxicity studies conducted with methyl ester octanoic acid; however, concern for the potential developmental toxicity of methyl ester octanoic acid is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Twelve short chain carboxylic acids were tested in an in vitro screen using a whole rat embryo culture system; 11 of the carboxylic acids, including octanoic acid, exhibited a spectrum of malformations similar to

valproic acid, a known human teratogen (Ref. 27).

11. *Terephthalic acid*. Groups of male and female Wistar and CD rats were exposed to dietary levels of 0, 0.03, 0.125, 0.5, 2.0, or 5.0 percent terephthalic acid for 90 days prior to mating (Ref. 29). Although there was no evidence of reproductive toxicity, there was evidence of postnatal developmental toxicity in both strains. At 2.0 and 5.0 percent terephthalic acid, there was decreased postnatal survival and postnatal body weight. Postnatal body weight data at lower doses was inconclusive.

12. *2,4-Toluenediamine*. There are no developmental toxicity studies conducted with 2,4-toluenediamine; however, data are available on *p*-toluenediamine sulfate. A summary of a study conducted by Hazleton Laboratories (Ref. 30) reports developmental toxicity to the rat at 80 mg/kg and the rabbit at 25 or 50 mg/kg *p*-toluenediamine sulfate. In the rat, evidence of developmental toxicity was demonstrated by increased resorptions and a significant increase in the incidence of skeletal variations. In the rabbit, an increased incidence of intrauterine deaths was demonstrated in both the mid- and high-dose groups. It is possible that maternal and/or developmental toxicity occurred at lower doses since no maternal data and only cursory summary tables of fetal data were included in the study summary.

Male Sprague-Dawley rats were fed 2,4-toluenediamine at dietary concentrations of 0, 0.01, or 0.03 percent for 10 weeks (Ref. 31). After 10 weeks, males were mated with virgin untreated females. Fifty-percent of the high-dose rats were unable to achieve fertilization. In addition, reproductive performance was impaired in the high-dose rats and possibly in the low-dose rats. The mating frequency was reduced in both groups. Microscopic abnormalities were noted in the testes of the high-dose rats, but not in the low-dose rats. Affected testes revealed focal or diffuse hypospermatogenesis.

A similar study was conducted by Thyssen et al., (Ref. 32). At the end of the 10-week treatment period, rats in the high-dose group exhibited decreased weight gain. Absolute epididymal and seminal vesicle weights for the high-dose group were significantly lower than control values, but relative organ weights were not different. Total mean sperm counts were decreased in both high and low dose rats. Additionally, at the end of an 11-week recovery period, rats exposed to the high-dose exhibited significantly lower sperm counts and

absolute testis and epididymal weights than the control group. Luteinizing hormone levels were higher for the high-dose group males than for the controls at both time-points. Conversely, testosterone levels were lower for this group than for the controls.

III. Findings

A. TSCA section 4(a)(1)(A)(i) and (B)(i) findings

1. *Acrylonitrile*. Under 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, and disposal of acrylonitrile may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that acrylonitrile may pose developmental toxicity is based on an oral developmental toxicity study in rats by Murray et al. (Ref. 18) which establishes both a LOAEL and NOAEL. Refer to Unit II.B.1. of this preamble and Reference 18 for additional details supporting this finding.

More than 61,500 workers are potentially exposed to acrylonitrile in the workplace during sampling, maintenance activities, clean-up of spills, drumming, and bulk loading of the final product, among other activities (Ref. 1). General population exposure can be expected as a result of an estimated 11 million pounds/year of acrylonitrile released to air, land, and water (Ref. 2). Refer to Unit II.A.1. of this preamble and References 1 and 2 for additional details on exposure.

2. *p-Aminophenol*. Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of *p*-aminophenol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that *p*-aminophenol may pose developmental toxicity is based upon a Chernoff/Kavlock screening assay. Data from this study suggest that *p*-aminophenol may cause developmental effects (Ref. 21). Refer to Unit II.B.2. of this preamble and Reference 21 for additional details supporting this finding.

According to the NOES survey of 1984, an estimated 375 workers may be potentially exposed to *p*-aminophenol (Ref. 49). In addition, an estimated 800,000 to 2.2 million consumers may be exposed to *p*-aminophenol when photohobbyists who develop their own film and prints use developers containing these substances (Ref. 3 and 12). Refer to References 3, 12, and 49 for

further information on the exposure potential of *p*-aminophenol.

3. *Bromochloromethane*. Under section 4(a)(1)(A)(i), EPA finds that the manufacturing and disposal of bromochloromethane may present an unreasonable risk of injury to human health due to its potential to cause reproductive toxicity and the extent of exposure summarized below. The finding that bromochloromethane may pose reproductive toxicity is based on a subchronic study via the inhalation route in guinea pigs and rabbits by Torkelson et al. (Ref. 22). Male guinea pigs and rabbits experienced decreased spermatogenesis, and fibrosis in numerous tubules, among other effects. Refer to Unit II.B.3. of this preamble and Reference 22 for additional details supporting this finding.

Workers are potentially exposed dermally and via inhalation during the manufacture of bromochloromethane as an explosion suppressant in area systems (Ref. 6). General population exposure may also occur when more than 200,000 pounds/year of bromochloromethane is potentially released to air from a single manufacturing site which may result in exposures ranging from 75 to 4,320 mg/year (Refs. 6 and 35). For more details on exposure, refer to Unit II.A.3. of this preamble and References 6 and 35.

4. *Carbon disulfide*. Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, use, and disposal of carbon disulfide may present an unreasonable risk of injury to human health due to its potential to cause developmental and reproductive toxicity and the extent of exposure summarized below. The finding that carbon disulfide may pose developmental effects is based on studies via inhalation by Tabacova (Refs. 23 and 24). Developmental effects observed include a dose-related reduction in fetal weight and a high incidence of malformations in the F1 progeny. For more information on this study, see Unit II.B.4. of this preamble and References 23 and 24 for additional details supporting this finding.

The finding that carbon disulfide may pose reproductive toxicity is also based on the studies by Tabacova (Refs. 23 and 24) which provide evidence of postnatal developmental toxicity. A report by Cai and Bao reported increased incidences of menstrual disturbances and of pregnancy toxemia in rayon workers (Ref. 48). In addition, Lancranjan et al. observed testicular effects in workers who had been exposed to carbon disulfide (Ref. 45). For more information on these studies, see Unit II.B.4. of this preamble and

Reference 23, 24, 45, and 48 for additional details supporting this finding.

More than 44,000 workers in a variety of occupations including chemical, health, and engineering technicians and janitors may be exposed via inhalation to carbon disulfide (Ref. 47). General population exposure via inhalation can be expected as a result of an estimated 82 million pounds released to the air from manufacturing facilities (Ref. 47). In addition, over 187,000 pounds of carbon disulfide were released/transferred from industrial facilities to WWT facilities and directly to water (Ref. 47). Refer to Unit II.A.4. of this preamble and Reference 47 for additional details on exposure.

5. *Dodecylphenol*. Under 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, and disposal of dodecylphenol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that dodecylphenol may pose developmental toxicity is based upon a TSCA section 8(e) notice (Ref. 25). This submission included a developmental toxicity study via gavage in rats. Data in this notice suggest that dodecylphenol may cause developmental toxicity. Refer to Unit II.B.5. of this preamble and Reference 25 for additional details supporting this finding.

More than 100 workers are potentially exposed to dodecylphenol at concentrations of 1,300 to 3,900 mg/day during manufacture of the substance, calcium phenate salts, and dodecylphenol ethoxylates (Ref. 8). General population exposure through drinking water may also occur as a result of releases to water from manufacturing facilities (Ref. 9). Refer to Unit II.A.5. of this preamble and References 8 and 9 for additional details on exposure.

6. *2-Ethylhexanol*. EPA is basing its developmental toxicity testing requirements for 2-ethylhexanol on the authority of both sections 4(a)(1)(A) and (B) of TSCA.

Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, use, distribution in commerce, and disposal of 2-ethylhexanol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that 2-ethylhexanol may pose developmental toxicity is based upon a TSCA section 8(e) notice (Ref. 26). Data in this notice suggest that 2-ethylhexanol may cause developmental toxicity (Ref. 26). Refer to Unit II.B.6 of

this preamble and Reference 26 for additional details supporting this finding.

An estimated 11,550 to 45,000 workers are potentially exposed to 2-ethylhexanol; in addition, consumer and general population exposure may result through use, distribution in commerce, and disposal (Ref. 10). Refer to Unit II.A.6. of this preamble and Reference 10 for more details on the exposure potential of 2-ethylhexanol.

Under section 4(a)(1)(B)(i), EPA has already found in a final test rule (52 FR 28698) that was not challenged that 2-ethylhexanol is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, use, distribution in commerce, and disposal. Refer to the 2-Ethylhexanol Proposed Test Rule (51 FR 45487) for additional discussion of the basis for EPA's exposure finding for 2-ethylhexanol (Ref. 10).

7. *Hexadecanoic acid*. Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, use, and disposal of hexadecanoic acid may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that hexadecanoic acid may pose developmental toxicity is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Refer to Unit II.B.7. of this preamble and Reference 27 for details supporting this finding for developmental toxicity.

Approximately 50,000 workers are potentially exposed to hexadecanoic acid according to the 1988 NOES survey, while millions of consumers and tens of thousands of janitors are expected to be exposed dermally to a variety of commercial and consumer products which involve skin contact (Refs. 11, 28, and 34). In addition, human drinking water exposure may range from 0.02 to 12,033 mg/year as a result of release from industrial effluents (Ref. 11). Refer to Unit II.A.7. of this preamble and References 11, 12, 28, and 34 for further information on the exposure potential of hexadecanoic acid.

8. *o-Hydroxyphenol*. Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of *o*-hydroxyphenol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that *o*-hydroxyphenol may pose developmental toxicity is based upon a

Chernoff/Kavlock screening assay. Data in this report suggests that this substance may cause developmental effects (Ref. 21). Refer to Unit II.B.8. of this preamble and Reference 21 for additional details supporting this finding.

Dermal exposure to *o*-hydroxyphenol during its manufacture is estimated to range from 600 to 4,000 mg/day (Ref. 13). During manufacture of *t*-butyl catechol and packaging of liquid developer, worker exposure may occur at concentrations of 1,000 to 4,000 mg/day in manufacturing and 100 to 800 mg/day in packaging (Ref. 13). In addition, an estimated 800,000 to 2.2 million consumers may be exposed to *o*-hydroxyphenol when photohobbyists who develop their own film and prints use developers containing these substances (Ref. 4 and 13). For more information on the exposure potential of *o*-hydroxyphenol, see Unit II.A.8. of this preamble and References 4 and 13.

9. *2-Methylpropanoic acid*. Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, and disposal of 2-methylpropanoic acid may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that 2-methylpropanoic acid may pose developmental toxicity is based upon its structural analogy to 2-ethylhexanoic acid (Ref. 42) and valproic acid, a known human teratogen (Refs. 27 and 33). Refer to Unit II.B.9. of this preamble and References 27, 33 and 42 for details supporting this finding for developmental toxicity.

More than 5,000 workers may be exposed to 2-methylpropanoic acid in the workplace, while general population exposure through drinking water (from manufacturing and monitoring data) may occur at a range of 0.01 to 14,348 mg/year for several sites (Refs. 14, 28, and 34). Refer to Unit II.A.9. of this preamble and References 14, 28, and 34 for further information on exposure.

10. *Methyl ester octanoic acid*. Under section 4(a)(1)(A)(i), EPA finds that the manufacturing and processing of methyl ester octanoic acid may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that methyl ester octanoic acid may pose developmental toxicity is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Refer to Unit II.B.10. of this preamble and

Reference 27 for details supporting this finding for developmental toxicity.

More than 350 workers may be potentially exposed to methyl ester octanoic acid in the workplace (Ref. 28). Estimated exposures range from 15 mg/day for inhalation to 3,900 mg/day for dermal contact (Ref. 28). Refer to Unit II.A.10. of this preamble and Reference 28 for further information on exposure.

11. *Terephthalic acid*. Under section 4(a)(1)(A)(i) of TSCA, EPA finds that the manufacturing, processing, and disposal of terephthalic acid may present an unreasonable risk of injury to human health due to its potential to cause reproductive toxicity and the extent of exposure summarized below. The finding that terephthalic acid may pose reproductive effects is based on a study that exposed two strains of rats to dietary concentrations of terephthalic acid for 90 days prior to mating (Ref. 29). Effects including decreased postnatal survival and body weight were observed in both rat strains. Refer to Unit II.B.11. of this preamble and Reference 29 for additional details supporting this finding.

General population exposure near plant sites can be expected through air emissions of terephthalic acid during manufacture and use, and through water releases from disposal of filtrate and decanted liquids during manufacturing and purification processes (Ref. 15). Average air releases for seven manufacturing sites are estimated at 41,000 kg/year/site, while emissions from user facilities range from 430 to 14,000 kg/site/year (Ref. 15). Water releases to a POTW from a recycling facility for PET bottles was estimated at 167,000 kg/year. Refer to Unit II.A.11. of this preamble and Reference 15 for additional details on exposure.

12. *2,4-Toluenediamine*. Under section 4(a)(1)(A)(i), EPA finds that the manufacture and disposal of 2,4-toluenediamine may present an unreasonable risk of injury to human health due to its potential to cause developmental and reproductive effects and the extent of exposure summarized below. The finding that 2,4-toluenediamine may pose developmental toxicity is based upon positive data for the salt, *p*-toluenediamine sulfate (Ref. 30). Rats and rabbits administered *p*-toluenediamine sulfate by gavage exhibited an increase in resorptions and skeletal anomalies. Refer to Unit II.B.12. of this preamble and Reference 30 for additional details supporting this finding for developmental toxicity.

The finding that 2,4-toluenediamine may pose reproductive toxicity is based upon a dietary study in which rats were fed 0, 0.01, or 0.03 percent 2,4-toluenediamine (Refs. 31 and 32). In the high-dose group, several effects were observed including reduced weight gain and inability to achieve fertilization. Reproductive performance was also impaired in the high-dose group and possibly in the low-dose group. Refer to Unit II.B.12. of this preamble and References 31 and 32 for additional details supporting this finding for reproductive toxicity.

An estimated 750 workers are potentially exposed to 2,4-toluenediamine in the workplace during routine process attention, sampling, maintenance, non-routine spills or leaks, and loading of containers to be shipped, and as a result of fugitive emissions from pumps and clean up operations (Ref. 16). General population exposure can also be expected as a result of releases to water from manufacturing facilities (Ref. 16). Refer to Unit II.A.12. of this preamble and References 16 and 17 for additional details on exposure.

B. TSCA Section 4(a)(1)(A)(ii) and (B)(ii) Findings

Under section 4(a)(1)(A)(ii) and for one substance under both sections 4(a)(1)(A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential health risks from: (1) Manufacturing, processing, use, distribution in commerce, and disposal of 2-ethylhexanol; (2) manufacturing, processing, use, and disposal of carbon disulfide and hexadecanoic acid; (3) manufacturing, processing, and disposal of acrylonitrile, dodecylphenol, 2-methylpropanoic acid, and terephthalic acid; (4) manufacturing, processing, and use of *p*-aminophenol and *o*-hydroxyphenol; (5) manufacturing and disposal of bromochloromethane and 2,4-toluenediamine; and (6) manufacturing and processing of methyl ester octanoic acid can reasonably be determined or predicted.

EPA believes that the guidelines, found at 40 CFR parts 795 through 798, represent state-of-the-art methodology and form the basis for a valid and scientifically acceptable test standard for evaluating the developmental and/or reproductive toxicity of these substances. The available studies are not acceptable to EPA because they do not conform with the guidelines, as detailed in the following Table 2.

TABLE 2.—FINDINGS UNDER TSCA SECTION 4(a)(1)(A)(ii)

Chemical	Data insufficiency under TSCA Section 4(a)(1)(A)(ii)	References
Developmental toxicity testing:		
acrylonitrile (107-13-1)	c	37
	e,k,o	38
p-aminophenol (123-30-8)	e, f	33
carbon disulfide (75-15-0)	h, j	39
dodecylphenol (27193-86-8)	c	40
2-ethylhexanol (104-76-7)	c,k	38
	c	41
hexadecanoic acid (57-10-3)	g	33
o-hydroxyphenol (120-80-9)	e, f	33
2-methylpropanoic acid (79-31-2)	g	33, 42
methyl ester octanoic acid (111-11-5)	g	33
2,4-toluenediamine (95-80-7)	a	43, 44
Reproductive toxicity testing:		
Bromochloromethane (74-97-5)	d, f	33
carbon disulfide (75-15-0)	h, j, i	39
terephthalic acid (100-21-0)	d, m, k	15
2,4-toluenediamine (95-80-7)	b, d, n	43, 44

- a. Inadequate dosing of animals — the maximum tolerated dose tested was not maternally toxic.
- b. Inadequate analysis of effects on one or both sexes and/or only one sex tested.
- c. Adequate testing of one species only.
- d. Inadequate duration of test — the test was a one-generation test.
- e. Inadequate exposure of animals over the critical period of organogenesis.
- f. Inadequate test — the test was a screening level test.
- g. Positive data exist on an analogue.
- h. Inadequate data reported on a number of endpoints including fetal malformations and maternal toxicity.
- i. Inadequate controls.
- j. Inadequate verification of test dose.
- k. Inadequate animal sample size.
- l. Inadequate data reported on postnatal behavioral effects.
- m. Inadequate data reported on a number of endpoints including male fertility and maternal and pup weights.
- n. Inadequate data reported on continuous exposure as modeled by the F generations in a multi-generational study.
- o. Inadequate data reported on a number of endpoints including maternal and fetal body weights, fetal sex, and internal or skeletal examination data.

C. TSCA Section 4(a)(1)(A)(iii) and (B)(iii) Findings

Under section 4(a)(1)(A)(iii) and for one substance under both sections 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing each of these substances is

necessary to develop such data for developmental and/or reproductive toxicity. EPA believes the data resulting from the proposed testing will be relevant to a determination as to the following: (1) Whether manufacturing, processing, use, distribution in commerce, and disposal of 2-ethylhexanol; (2) manufacturing, processing, use, and disposal of carbon disulfide and hexadecanoic acid; (3) manufacturing, processing, and disposal of acrylonitrile, dodecylphenol, 2-methylpropanoic acid, and terephthalic acid; (4) manufacturing, processing, and use of p-aminophenol and o-hydroxyphenol; (5) manufacturing and disposal of bromochloromethane and 2,4-toluenediamine; and (6) manufacturing and processing of methyl ester octanoic acid does or does not present an unreasonable risk of injury to human health.

D. Section 4(a)(1)(B) findings

With the exception of 2-ethylhexanol for which the finding was made in a previous rulemaking, EPA has chosen not to make section 4(a)(1)(B) findings where it could have for these substances. This was done to conserve resources. EPA may choose at a later date to make such findings for any or all of these substances and does not want to imply that not doing so at this time in

any way suggests that such findings could not be made or are inappropriate.

IV. Proposed Rule

A. Proposed Testing and Test Standards

On the basis of the findings provided in Unit III. of this preamble, EPA is proposing developmental and/or reproductive toxicity testing for the 12 substances included in this proposed rule (see Unit I. of this preamble). The tests would be conducted according to specific test guidelines set forth in 40 CFR part 798 and identified in Table 1. The studies are to be conducted in accordance with TSCA Good Laboratory Practice (GLP) Standards in 40 CFR part 792.

To adequately assess health risk to the developing fetus, this rule proposes requiring developmental toxicity testing in at least two mammalian species. For those substances that have an adequate test in one mammalian species, testing is limited to proposing a second mammalian species. Similarly, to adequately assess health risk to reproduction, this rule proposes a standard two-generation reproductive toxicity test.

The oral route is being proposed as the route of administration except as noted. In the instance where EPA has identified positive inhalation data that

are inadequate for risk assessment and/or where exposure is primarily via inhalation, testing is being proposed via the inhalation route. Inhalation exposure shall be for 6 hours per day and 5 days per week prior to mating. Throughout the periods of mating, gestation, and lactation, animals shall be exposed for 7 days a week. Pregnant and lactating animals should not be exposed from day 20 to 21 of gestation to day 4 to 5 postnatally.

At this time, EPA is only proposing developmental and/or reproductive toxicity testing for the 12 substances included in this proposed rule. EPA may, in the future, find other data deficiencies for these substances and propose other tests.

B. Test Substances

EPA is proposing that each of the test substances be of the highest percent purity commercially available. EPA has specified relatively pure substances for testing because EPA is interested in evaluating the effects attributable to each of the substances themselves. This requirement lessens the likelihood that any effects seen are due to impurities or additives. EPA believes that the percent purities listed in Table 1 of this preamble are readily available.

C. Persons Required to Test

Because of the findings in Unit III. of this preamble, EPA is proposing that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process one or more of the named test substances, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. This period is defined in 40 CFR 791.3(h). By-product manufacturers and importers of one or more of these substances would be considered manufacturers under this rule. As explained in 40 CFR part 790, initially manufacturers but not processors of one or more of these substances would be required to submit letters of intent or exemption applications. Pursuant to a recent amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications initially. Such manufacturers should consult the Federal Register of May 7, 1990 (55 FR 18881) for further details.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for these substances. EPA is interested in evaluating the

effects attributable to the substances themselves and has specified relatively pure substances for testing.

D. Reporting Requirements

As required in 40 CFR 799.10, all data developed under the final rule would be conducted and reported in accordance with its TSCA GLP Standards which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(C), EPA is proposing specific reporting requirements for each of the proposed test standards as follows:

Final reports for substances which are subject to 40 CFR part 798.4900 or 798.4350 would be due 12 and 15 months, respectively, from the effective date of the final rule; interim progress reports would be due at 6-month intervals beginning 6 months from the effective date of the final rule.

Final reports for substances which are subject to 40 CFR part 798.4700 would be due 29 months from the effective date of the final rule; interim progress reports would be due at 6-month intervals beginning 6 months from the effective date of the final rule.

The effective date of the final rule will be 44 days after the date of its publication in the Federal Register.

According to a recent EPA report entitled "EPA Census of the Toxicological Testing Industry", laboratory availability for developmental and reproductive toxicity testing should be adequate to accommodate the testing proposed in this rule (Ref. 50). If potential test sponsors can document that the developmental and/or reproductive toxicity testing proposed in this rule needs to be staggered due to insufficient laboratory availability, thereby necessitating extending the reporting deadlines, EPA proposes the following. Each substance would be ranked according to production and importation volume as reported in the TSCA inventory. Those substances with the largest production/importation volumes would be required to be tested first, followed by those substances with the next largest volumes. If staggered testing is necessary, EPA proposes testing in this order since all of the substances are being proposed for testing due to concern for their hazard potential.

EPA would extend the reporting requirements of the lower production volume substances subject to this rule by an additional 6 months to initially accommodate any shortfall in laboratory capacity. EPA anticipates that laboratory capacity would increase, if necessary, to accommodate the demand created by future amendments to this rule.

V. Issues for Comment

1. EPA solicits additional information on the developmental or reproductive toxicity of the substances in this rule. Such information may cause EPA to alter its decision on the need for testing of one or more of these substances.

2. This proposed rule specifies TSCA test guidelines with minor modifications as the test standards. EPA is soliciting comment as to whether these test guidelines are appropriate and adequate to characterize the developmental and/or reproductive effects of substances listed in Table 1.

3. This rule would require that 10 developmental and 4 reproductive toxicity tests be run concurrently. EPA believes that adequate laboratory capacity exists for conducting this testing within the reporting deadlines. Further, EPA believes that if it were to periodically amend the rule by requiring testing of an additional 15 to 20 substances per year, laboratory facilities would still be able to meet this testing demand. EPA requests comment on laboratory availability and the reporting requirements.

4. Developmental toxicity test guidelines in 40 CFR 798.4900 specify that testing shall be performed on at least two mammalian species. EPA has regularly required two species testing in past test rules to adequately evaluate the potential risk of substances for developmental effects. EPA solicits comments on this procedure.

5. Three of the substances, 2-methylpropanoic acid, hexadecanoic acid, and methyl ester octanoic acid, are being proposed for testing on the basis of structure activity relationships and exposure potential. 2-Methylpropanoic acid is analogous to valproic acid (2-propylpentanoic acid), a known human and experimental animal developmental toxicant and 2-ethylhexanoic acid, an experimental animal developmental toxicant. These substances are all branched, short chain carboxylic acids.

Hexadecanoic acid and methyl ester octanoic acid, straight chain carboxylic acids, are analogous to octanoic acid. Octanoic acid was tested in an *in vitro* screen using a whole rat embryo culture system and exhibited a spectrum of malformations similar to valproic acid, which increases EPA's concern for this class of substances.

In addition to these structure activity relationships, these three substances are high production and/or exposure substances. Testing of these acids will help identify the characteristics of carboxylic acids such as the length of the backbone and position, length, and

composition of the branching which may affect biological activity. EPA requests comment on the proposed testing for these members of the class of carboxylic acids and solicits information on alternative substances that the public may feel are more appropriate for testing.

6. Several of the substances proposed in this rule for testing via the oral route are included on the Clean Air Toxics List. For those substances, dosing via the inhalation route may be a more appropriate route of exposure. EPA solicits comment on this issue.

7. The following issues concern the criteria used to select chemicals for testing for this particular rule:

(a) Some have questioned whether, as a matter of policy, the criteria are appropriate for selecting chemicals for developmental and reproductive toxicity. EPA solicits comments on this issue.

(b) Some have questioned whether, as a matter of policy, it is appropriate to use SAR alone without additional criteria being met as the basis for testing. They have questioned whether evidence from SAR is compelling enough to justify testing given other available information. They have also questioned whether the burden/cost of tests for these substances is reasonable given the criteria of SAR and exposure potential. EPA solicits comments on this issue.

(c) Some have questioned whether, as a matter of policy, the receipt of an 8(e) notice is a sufficient basis for testing. EPA solicits comments on this issue.

VI. Economic Analysis of the Proposed Rule

EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on test sponsors as a result of the proposed testing. The economic analysis estimates the costs of conducting the proposed testing for each of the 12 substances, including both laboratory and administrative costs, and evaluates the potential for adverse economic impacts as a result of these test costs, using a comparison between a substance's annualized test costs and its annual revenues.

The estimated total costs of testing for all 12 substances are \$2.0 to \$2.9 million, including \$1.6 to \$2.3 million in laboratory costs and \$400,000 to \$600,000 in administrative costs. The total costs of testing for each substance are as follows: acrylonitrile, dodecylphenol and 2-ethylhexanol—\$48,000 to \$67,000; *p*-aminophenol, hexadecanoic acid, *o*-hydroxyphenol, and 2-methylpropanoic acid—\$92,000 to \$129,000;

bromochloromethane and terephthalic acid—\$240,000 to \$357,000; 2,4-toluenediamine—\$332,000 to \$486,000; carbon disulfide—\$573,000 to \$875,000.

To evaluate the potential economic impacts of the proposed testing, test costs are annualized and compared with annual revenues. The annualized test costs, using a 7 percent cost of capital over a period of 15 years, are as follows: acrylonitrile, dodecylphenol and 2-ethylhexanol—\$5,000 to \$7,000; *p*-aminophenol, hexadecanoic acid, *o*-hydroxyphenol, and 2-methylpropanoic acid—\$10,000 to \$14,000; bromochloromethane and terephthalic acid—\$26,000 to \$39,000; 2,4-toluenediamine—\$36,000 to \$53,000; carbon disulfide—\$63,000 to \$96,000.

Based on the comparison between annual costs and revenues, it appears that for 11 out of the 12 substances the test costs will have no significant adverse economic impacts. The test costs for bromochloromethane may pose some potential for adverse impact. If comments are received which indicate that the impact is greater, a more comprehensive and detailed analysis will be conducted which more precisely predicts the magnitude and distribution of the expected impacts. Refer to the economic analysis contained in the public record for this rulemaking for more detail on test cost estimation and the evaluation of economic impacts.

VII. Availability of Test Facilities and Personnel

As required by section 4(b)(1) of TSCA, EPA determined that there will be available test facilities and personnel to perform the testing specified in this proposed rule. This rule would require concurrent developmental and reproductive toxicity testing of 12 substances. According to the report entitled "EPA Census of the Toxicological Testing Industry", EPA believes that space within the laboratories is available to adequately accommodate the 10 substances proposed for developmental and the 4 substances proposed for reproductive toxicity testing (Ref. 50). EPA anticipates that laboratory capacity would increase, if necessary, to accommodate the demand created by future amendments to this rule.

VIII. Public Meeting

If requested, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call Mary Lou Hewlett, Chemical Testing Branch (202) 475-8162 by April 18, 1991. The meeting is open to the

public, but active participation will be limited to EPA representatives and those who requested to comment. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

IX. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public record.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or a similar designation on the face of each document or attachment in the comment which contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information which has been in the public file for more than 30 days to be in the public domain.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42123). In addition, each substance in the rule has a separate docket number. This record contains the basic information considered by EPA in developing this proposal and appropriate Federal Register notices. EPA will supplement this record as necessary.

A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m. Monday through Friday, except legal holidays.

The record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034; August 17, 1989).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(2) TSCA test guidelines cited as test standards for this rule.

(3) Communications before proposal consisting of:

(a) Contact reports of telephone conversations.

(b) Meeting summaries including RM1 Meeting. (July 12, 1990).

(4) Reports—published and unpublished factual materials.

(5) Data received under section 8(e) of TSCA.

B. References

(1) United States Environmental Protection Agency. (USEPA). Production exposure profile of acrylonitrile. Russell E. Farris to Frank D. Kover. Existing Chemicals Assessment Division, Washington, DC. (August 10, 1989).

(2) USEPA. Summary document on acrylonitrile. Prepared by Nancy Chiu. Chemical Screening Branch, Office of Toxic Substances, Washington, DC. (July 1990).

(3) Oak Ridge National Laboratory. Chemical hazard information profile on *p*-aminophenol. Prepared by Michael G. Ryon. (March 29, 1984).

(4) USEPA. Hydroquinone; final test rule. (50 FR 53145; December 30, 1985).

(5) USEPA. Economic Impact Analysis of the Multi-Substance Proposed Test Rule on Developmental and Reproductive Toxicity, Non-Confidential version. Washington, DC (July 1990).

(6) USEPA. Occupational exposure/environmental release analysis of bromochloromethane. Prepared by Vanessa E. Rodriguez. Economics and Technology Division, Washington, DC. (May 7, 1990).

(7) USEPA. Summary of exposure information on carbon disulfide obtained from the Toxic Release Inventory System. Prepared by Andrew Battin, Exposure Assessment Division, Washington, DC. (July 1990).

(8) USEPA. Production-exposure profile of dodecylphenol. Larry E. Longanecker to Frank D. Kover. Chemical Screening Branch, Washington, DC. (May 26, 1989).

(9) USEPA. Summary of dodecylphenol environmental exposures screening estimates. Prepared by Conrad Flessner, Jr., Exposure Assessment Division, Washington, DC. (May 16, 1990).

(10) USEPA. 2-Ethylhexanol; proposed test rule (51 FR 45487; December 19, 1986).

(11) USEPA. Exposure assessment for hexadecanoic acid. Christina Cinalli to Clare Stine. Office of Toxic Substances, Washington, DC. (July 1990).

(12) USEPA. Diethylene glycol butyl ether and diethylene glycol butyl ether acetate; proposed test rule (51 FR 27880; August 4, 1986).

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(16) USEPA. Occupational exposure and environmental release of toluenediamine. Vinay Kumar to Andrea Blaschka. Office of Toxic Substances, Washington, DC. (June 5, 1984).

(17) USEPA. Air releases during manufacture of 2,4-toluenediamine. Vinay Kumar to Joan Lefler. Exposure Assessment Branch, Washington, DC. (1984).

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(28) USEPA. Intra-agency memorandum from Greg Macek to Clare Stine. Office of Toxic Substances, Washington, DC. (July 23, 1990).

(29) Chemical Industry Institute of Toxicology. A 90-day study of terephthalic acid-induced urolithiasis and reproductive performance in Wistar and CD rats. CIIT Docket #11622. The Chemical Industry Institute of Toxicology, Six Davis Drive, Post Office Box 12137, Research Triangle Park, NC 27709. (1982).

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sulfate, Resorcinol, and *p*-aminophenol in rats and rabbits". *Teratology* 33: 31A. (1986).

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(38) USEPA. Comments on the developmental toxicity studies of acrylonitrile and 2-ethylhexanol. Intra-agency memorandum from Jennifer Seed to Clare Stine. Office of Toxic Substances, Washington DC. (July 5, 1990).

(39) USEPA. Chemicals to be considered for the Endpoint Specific Test Rule for Developmental Toxicity. Intra-agency memorandum. Carole A. Kimmel to Claire Stine. Office of Toxic Substances, Washington, DC. (March 5, 1990).

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(43) USEPA. An update on data adequacy for 2,4-toluenediamine. Intra-agency memorandum. Jennifer Seed to Virginia Werling. Office of Toxic Substances, Washington, DC. (March 1, 1990).

(44) USEPA. Review of studies on the reproductive and developmental toxicity of 2,4-toluenediamine. Intra-agency memorandum. Marlissa Campbell to Andrea Blaschka. Office of Toxic Substances, Washington, DC. (June 21, 1988).

(45) USDHEW. Occupational exposure to carbon disulfide; Criteria for a recommended

standard. III. Biological effects of exposure. (May 1977).

(46) USEPA. Exposure assessment for methyl ester octanoic acid. Christina Cinalli to Clare Stine. Office of Toxic Substances, Washington, DC. (July 1990).

(47) USEPA. Engineering report for carbon disulfide. Kathleen Franklin to Clare Stine. Chemical Testing Branch, Washington, DC. (June 4, 1990).

(48) DOL. Occupational Safety and Health Administration. Air Contaminants; Final Test Rule (54 FR 2332; January 19, 1989).

(49) USEPA. Intra-agency memorandum from Joseph B. Fernandes to Clare Stein. Office of Toxic Substances, Washington, DC. (July 11, 1990).

(50) USEPA. EPA Census of the Toxicological Testing Industry. Office of Toxic Substances, Washington, DC. (June 1990). (Draft Report).

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least \$100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of US enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to vary from 100 to 4,500 hours per respondent with an average of 600 hours per respondent. The estimates include 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0033), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Testing laboratories, Reporting and recordkeeping requirements, and Testing.

Dated: February 25, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, Chapter I, Subchapter R, part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By adding § 799.5050 to read as follows:

§ 799.5050 Multi-test requirements for specific chemical substances.

(a) *General testing provisions*—(1) *Identification of test substance.* Table 1 in paragraph (a)(5) of this section identifies those chemical substances that shall be tested in accordance with

this section. The purity of each test substance shall be 99 percent or greater, unless otherwise specified in the "Additional testing requirements" column of Table 1 under paragraph (a)(5) of this section.

(2) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process, including persons who manufacture or process or intend to manufacture or process one or more of the substances in paragraph (a)(5) of this section as a by-product, or who import or intend to import products which contain one or more of the substances in paragraph (a)(5) of this section after the date specified in Table 1 under paragraph (a)(5) of this section to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications, as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking. Persons who manufacture, import, or process one or more of the substances in paragraph (a)(5) of this section only as an impurity are not subject to these requirements.

(3) *Applicability of test guidelines.* The guidelines and other test methods cited in Table 1 under paragraph (a)(5) of this section are referenced here as they exist on the effective date of the specific final rule for the individual chemical substance being listed.

(4) *Reporting requirements.* All testing requirements in this section are subject to the submission of interim progress reports every 6 months beginning 6 months after the effective date for the individual chemical substance listed under paragraph (a)(5) of this section, and the deadline for the submission of all final reports is specified in the "limitations and restrictions" column of Table 1 under paragraph (a)(5) of this section.

(5) *Designation of specific chemical substances and applicable testing requirements.* The substances identified in this paragraph by name and CAS number shall be tested in accordance with the designated testing requirements and any additional requirements and limitations specified in the following Table 1:

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
57-10-3	hexadecanoic acid Health effects testing: Developmental toxicity	§ 798.4900		Reports: 12 mo.	(-/-/-)
74-97-5	bromochloromethane Health effects testing: Reproductive toxicity	§ 798.4700		Reports: 29 mo.	(-/-/-)
75-5-0	carbon disulfide Health effects testing: Developmental toxicity Reproductive toxicity	§ 798.4350 § 798.4700, except paragraphs (c)(4) and (5)(i)	(2)(iii), (3)(i)	Reports: 15 mo. Reports: 29 mo.	(-/-/-) (-/-/-)
79-31-2	2-methylpropanoic acid Health effects testing: Developmental toxicity	§ 798.4900		Reports: 12 mo.	(-/-/-)
95-80-7	2,4-toluenediamine Health effects testing: Developmental toxicity Reproductive toxicity	§ 798.4900 § 798.4700	(4)(i) (4)(i)	Reports: 12 mo. Reports: 29 mo.	(-/-/-) (-/-/-)
100-21-0	terephthalic acid Health effects testing: Reproductive toxicity	§ 798.4700	(4)(i)	Reports: 29 mo.	(-/-/-)
104-76-7	2-Ethylhexanol Health effects testing: Developmental toxicity	§ 798.4900, except paragraph (e)(1)(i)	(1)(i)	Reports: 12 mo.	(-/-/-)
107-13-1	acrylonitrile Health effects testing: Developmental toxicity	§ 798.4900, except paragraph (e)(1)(i)	(1)(i)	Reports: 12 mo.	(-/-/-)
111-11-5	methyl ester octanoic acid Health effects testing: Developmental toxicity	§ 798.4900		Reports: 12 mo.	(-/-/-)
120-80-9	<i>o</i> -hydroxyphenol Health effects testing: Developmental toxicity	§ 798.4900		Reports: 12 mo.	(-/-/-)
123-30-8	<i>p</i> -aminophenol Health effects testing: Developmental toxicity	§ 798.4900	(4)(i)	Reports: 12 mo.	(-/-/-)
27193-86-8	dodecylphenol Health effects testing: Developmental toxicity	§ 798.4900, except paragraph (e)(1)(i)	(1)(i)	Reports: 12 mo.	(-/-/-)

(b) *Additional requirements.* For the purposes of the specific chemical substances subject to the requirements of this section, the following additional requirements apply when cited for the specific chemical substance in the "(b) Additional testing requirements" column in Table 1 under paragraph (a)(5) of this section:

(1) *Species*—(i) *Mammals.* A mammalian species other than the rat shall be used as the test species. Commonly used species include the mouse, rabbit, and hamster. If other

mammalian species are used, the tester shall provide justification/reasoning for their selection. Commonly used laboratory strains shall be employed. The strain shall not have low fecundity and shall preferably be characterized for its sensitivity to developmental toxins.

(ii) The test species shall be the rat.

(2) *Duration and frequency of exposure.* (i) Animals shall be exposed for 6 hours per day for 1 day.

(ii) Animals shall be exposed for 6 hours per day, 5 days per week for a 90-day period.

(iii) The animals shall be exposed to the test substance for 6 hours per day and 5 days per week, prior to mating. Throughout the periods of mating, gestation, and lactation, animals shall be exposed for 7 days a week. Pregnant and lactating animals should not be exposed from day 20 to 21 of gestation to day 4 to 5 postnatally.

(iv) - (xix) [Reserved]

(xx) A multiple schedule shall be employed. Fixed ratio and differential reinforcement of low rate contingencies

shall alternate throughout daily test sessions of at least 60 minutes duration.

(3) *Route of exposure.* (i) Animals shall be exposed via the inhalation route.

(ii) [Reserved]

(4) *Percent purity.* The percent purity for the designated substances shall be 99 percent or greater, as specified in paragraph (a)(1) of this section. However, an alternate percent purity shall be used if referenced in the "Additional testing requirements" column of Table 1 under paragraph (a)(5) of this section. The alternate percent purities are:

(i) 98 percent pure or greater.

(ii) 97 percent pure or greater.

(iii) 96 percent pure or greater.

(iv) 95 percent pure or greater.

[FR Doc. 91-5012 Filed 3-1-91; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42134; FRL 3774-7]

Multi-substance Rule for the Testing of Neurotoxicity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule, under section 4 of the Toxic Substances Control Act (TSCA), that would require manufacturers and processors of 10 substances to conduct testing for neurotoxicity. The 10 substances are related in that all are volatile solvents with high production volumes, occupational exposure, consumer exposure, and presence in and/or release to the environment. This rule proposes cognitive function and screening level tests for neurotoxicity where such data are not available for that substance. This proposed rule supports EPA's effort to require the testing of many substances for a single effect or endpoint, in this case neurotoxicity.

DATES: Submit written comments on or before May 3, 1991. If persons request an opportunity to submit oral comments by April 18, 1991, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VIII. of this preamble.

ADDRESSES: Submit written comments, identified by the docket number (OPTS-42134), in triplicate to: TSCA Public Docket Office (TS-793), Office of

Pesticides and Toxic Substances, Environmental Protection Agency, Rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 am to noon, and 1 pm to 4 pm, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing a test rule under section 4(a) of TSCA to obtain neurotoxicity data for 10 volatile substances that have substantial production, for which there is or may be substantial human exposure, and for which data on neurotoxicity are insufficient.

I. Introduction

A. Background

EPA has developed this multi-substance test rule to test a number of substances for a single toxicological endpoint, neurotoxicity. EPA believes that available data on the neurotoxic effects of many chemicals in commerce, to which millions of Americans are exposed, are insufficient to evaluate human health risk and has initiated this program to test them. This approach is supported by a recent study by the Office of Technology Assessment (OTA) on the health threat from neurotoxic chemicals (Ref. 1). The OTA study stated that little is known about the potentially adverse effects of thousands of chemicals on the nervous system because of inadequate research and testing. EPA intends this proposed rule to be the first in a series of rules to obtain data on neurotoxicity.

Organic solvents were targeted for the first neurotoxicity endpoint rule because as a group they are thought to be associated with neurological effects and because they contain some high exposure chemicals (Ref. 4). Each solvent in this rule has a high vapor pressure, and their widespread use in the workplace and by consumers assures that many people will have acute and/or chronic exposure. Although some neurotoxicity data is available on most of these solvents, animal testing using methods equivalent to the TSCA neurotoxicity guidelines is rare. It is anticipated that data derived from testing according to these guidelines will not only screen for

certain neurotoxic effects of each solvent, but will also indicate the relative safety of the tested solvents for this endpoint.

During the development of this proposed test rule EPA considered two basic approaches to chemical selection. The first approach was to identify those chemicals that are believed to cause health effects in man or laboratory animals, based on toxicity studies and/or structural-activity relationships (SAR), and to then select those with the highest exposure potential. This is the approach EPA followed in construction of the developmental and reproductive toxicity endpoint rule published elsewhere in this issue of the *Federal Register*. The second approach was to select chemicals solely on exposure potential. EPA determined that the second approach was more appropriate for selecting chemicals for the neurotoxicity test rule. For some types of test rules the first approach of basing chemical selection on available toxicity studies or SAR is preferable. In the case of an endpoint like neurotoxicity, however, EPA does not believe that reliance on available toxicity studies and SAR is the best approach for the following reasons. The existing literature and knowledge of SAR are fairly sparse on the neurotoxic effects of organic solvents. In addition, the few studies that have been identified are typically short-term or high-dose studies which, although they might support concern for more testing (as is the case for 6 of the 10 chemicals in this proposed rule), do not necessarily reflect higher potency or hazard potential than non-tested chemicals. Because of this EPA chose the second approach, i.e., selection based on exposure. By selecting those organic solvents with high exposure the limited resources available for testing would be focused on the few chemicals with widespread use and human exposure, instead of requiring EPA to consider the whole universe of organic solvents for testing.

The initial selection of specific organic solvents by EPA as candidates for testing was based on five criteria: production level greater than 10 million pounds, occupational exposure greater than 10,000 workers, consumer exposure, vapor pressure greater than 5 mmHg, and presence in or release to the environment (Ref. 2). Production data from 1986 to 1988 were considered in prioritizing the substances by production volume. Occupational exposure data were obtained from the National Occupational Exposure Survey (NOES) conducted by the National Institute for Occupational Safety and

Health (NIOSH) in 1981-1983. Consumer exposure was estimated by EPA based on a usage survey of products containing the substances in this rule (Refs. 5, 6, and 9). Vapor pressure values were obtained from the CHEMFATE database (Ref. 2). Environmental release data were obtained from the 1987 Toxic Release Inventory (TRI) (Ref. 8) and data on presence in the environment were obtained from the Hazardous Substance Databank (Ref. 28). Production and occupational exposure data were considered simultaneously in prioritizing chemicals for testing. The resulting list was modified by eliminating chemicals with a vapor pressure less than 5mm Hg, because those chemicals have less tendency to volatilize and cause exposure by inhalation. Consumer exposure and environmental release data were the last criteria used in the selection of chemical candidates for this rule.

By this process, 14 substances were selected as candidates for the neurotoxicity test rule: acetone (CAS No. 67-64-1), *n*-amyl acetate (CAS No. 628-63-7), 1-butanol (CAS No. 71-36-3), *n*-butyl acetate (CAS No. 123-86-4), diethyl ether (CAS No. 60-29-7), ethanol (CAS No. 64-17-5), 2-ethoxyethanol (CAS No. 110-80-5), ethyl acetate (CAS No. 141-78-6), isobutyl alcohol (CAS No. 78-83-1), methyl ethyl ketone (CAS No. 78-93-3), methyl isobutyl ketone (CAS No. 108-10-1), tetrahydrofuran (CAS No. 109-99-9), toluene (CAS No. 108-88-3), and xylenes (CAS No. 1330-20-7). Of these 14 chemicals, 6 are among the top 25 chemicals emitted into the air in 1987 according to the Toxic Release Inventory (Ref. 1). After the collection and review of available neurotoxicity data on these 14 substances, 4 of them, ethanol, methyl ethyl ketone, toluene, and xylenes were found to have sufficient neurotoxicity data to justify exclusion from this proposed test rule (Ref. 3 and 34). This finding for methyl ethyl ketone, toluene, and xylenes confirms decisions in previous TSCA section 4 actions which did not require neurotoxicity testing for these four substances (47 FR 58025, December 29, 1982; 47 FR 56391, December 16, 1982; 47 FR 56392, December 16, 1982). The remaining 10 substances were found to have insufficient neurotoxicity data. This rule proposes neurotoxicity testing for these 10 substances:

Chemical name/CAS No.	Docket No.
acetone (CAS No. 67-64-1).....	42134/42135
<i>n</i> -amyl acetate (CAS No. 628-63-7).....	42134/42136

Chemical name/CAS No.	Docket No.
1-butanol (CAS No. 71-36-3).....	42134/42137
<i>n</i> -butyl acetate (CAS No. 123-86-4).....	42134/42138
diethyl ether (CAS No. 60-29-7).....	42134/42139
2-ethoxyethanol (CAS No. 110-80-5).....	42134/42140
ethyl acetate (CAS No. 141-78-6).....	42134/42141
isobutyl alcohol (CAS No. 78-83-1).....	42134/42142
methyl isobutyl ketone (CAS No. 108-10-1).....	42134/42017B
tetrahydrofuran (CAS No. 109-99-9).....	42134/42143

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall, by rule, require testing of a substance to develop appropriate test data if the Administrator makes certain findings as described in TSCA section 4(a)(1)(A) or (B). Discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules which were published in the Federal Register of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

In evaluating the testing needs for these 10 substances, EPA considered the available published and unpublished information on the production volume, human exposure, environmental release, and neurotoxicity to animals and humans. From its evaluation of these data, EPA is proposing specific neurotoxicity testing for these substances under TSCA section 4(a)(1)(B). In addition, EPA considered available information on whether these substances may present an unreasonable risk of injury to health and as a consequence EPA is proposing neurotoxicity testing for six of the substances also under TSCA section 4(a)(1)(A).

EPA will continue to evaluate the need for this type of testing of additional substances and will amend this rule as necessary to require such testing. EPA intends to identify future candidates for this rule from its chemical screening program, TSCA section 8(e) data, Premanufacture Notices, Structure Activity Relationship data, nominations from other EPA programs, Interagency Testing Committee recommendations, and other relevant sources.

In addition, elsewhere in this issue of the Federal Register, EPA is proposing another TSCA section 4 multi-substance test rule. The other rule requires developmental and/or reproductive effects testing of 12 substances (none of which are the same as those included in

this notice). The codified portion of the proposed rule for neurotoxicity testing is written as an amendment to the codified portion of the proposed rule for developmental and reproductive toxicity testing. For future multi-substance rules, EPA plans to prepare amendments to the combined proposed section of the CFR (i.e., § 799.5050). By so doing, these and subsequent multi-substance endpoint rules would be listed in a single table, and their test requirements (health, environmental, chemical fate, etc.) for a substance would be in a single location. EPA believes that listing the test requirements for all the multi-substance endpoint rules in one table will be advantageous for those subject to TSCA section 4 test rules and will simplify and aid in their monitoring and compliance.

II. Review of Available Data

A. Use

Organic solvents are used as solubilizers, dispersants, or diluents, and because of this have many industrial and consumer applications (Ref. 4). They can be incorporated in a variety of products, including paints, varnishes, lacquers, adhesives, plastics, inks, waxes, polishes, smokeless powder, perfume, and medicine. They can also be used in extraction processes, chemical synthesis, and cleaning, degreasing, and drying operations. The following Table 1 lists some of the uses of the 10 organic solvents which are the subjects of this proposed rule.

TABLE 1.—USES OF ORGANIC SOLVENTS

Name/CAS No.	Uses ¹
acetone (67-64-1).	37%—Production of methacrylic acid and ester; 10% —production of methyl isobutyl ketone; 14% — production of bisphenol A; solvent for industrial coatings.
<i>n</i> -amyl acetate (628-63-7).	>50% — solvent for nitrocellulose lacquers and paints; extraction solvent in penicillin manufacture and electrostatic spray coatings for automobile and misc. uses.
1-butanol (71-36-3).	15% — direct solvent use; 7% — plastizers; 35% — production of butyl acrylate/methacrylates; 25% in production of glycol ethers.
<i>n</i> -butyl acetate (123-86-4).	81% — solvent for coatings; 9% —process solvent; 10%—misc. solvent use.

TABLE 1.—USES OF ORGANIC SOLVENTS—Continued

Name/CAS No.	Uses ¹
diethyl ether (60-29-7).	50% — smokeless powder manufacture; 20% — as an engine starting fluid; 10% — extraction solvent for fats and oils; 10% — pharmaceutical and medical uses; 10% — perfume.
2-ethoxyethanol (110-80-5).	28% — Preparation of ethylene glycol monoethyl ether acetate; 7% — general solvent uses for coatings and inks; 65% — exported.
ethyl acetate (141-78-6).	64% — solvent for lacquers and enamel coatings; 15% — solvent for inks; 13% — plastics solvent; 3% — chemical synthesis.
isobutyl alcohol (78-83-1).	28% — direct solvent uses; 11% — preparation of isobutylamines; 21% — as a lube oil additive; 19% — preparation of isobutyl acetate; 8% — preparation of amino resins.
methyl isobutyl ketone (108-10-1).	75% — solvent for protective coatings; 15% — solvent extraction; 5% — solvent for adhesives and ink.

TABLE 1.—USES OF ORGANIC SOLVENTS—Continued

Name/CAS No.	Uses ¹
tetrahydrofuran (109-89-9).	77% — production of polytetrahydrofuran; 23% — solvent use (PVC cements, magnetic tape, reaction solvent).

¹Source: "Economic Impact Evaluation of Proposed Multi-Chemical Rule for the Testing of Neurotoxicity". July 25, 1990. (Ref. 32).

B. Exposure, Production, Vapor Pressure

Organic solvents such as those included in this proposed rule have a higher potential for human exposure than many other chemicals because they are often highly volatile and are able to penetrate the skin due to their nonpolar structure. Because of their high volatility, a major route of exposure is inhalation. Once organic solvent vapors enter the lungs, they diffuse across respiratory membranes, due to their relatively small molecular weight and lipid solubility, and enter the bloodstream. These properties also permit a second major route of exposure

via skin penetration. For example, two *in vitro* studies which looked at absorption through human epidermis found rates of 0.65 $\mu\text{mol}/\text{cm}^2/\text{hr}$ for pure 1-butanol (Ref. 36) and 0.79 $\text{mg}/\text{cm}^2/\text{hr}$ for pure 2-ethoxyethanol (Ref. 37). This demonstrated absorption plus the ubiquity of solvents and the casual approach to their use almost assure exposure by inhalation and skin contact (Ref. 4).

The potential for consumers to be exposed to solvents is high because solvents comprise a large fraction of many consumer products and are used for purposes such as cleaning and paint removal where a person is in close contact with the solvent. To estimate the potential for consumer exposure to these ten substances, EPA determined their presence in consumer products and, with a usage survey (Ref. 35), estimated the number of consumers potentially exposed to each solvent by consumer product. As shown in the following Table 2, EPA found that all 10 substances were present in consumer products.

TABLE 2.—CONSUMER EXPOSURE

Chemical/CAS No.	Presence in Consumer products(number)	Consumer usage per product(millions of consumers) ¹
acetone (67-64-1).....	51.....	3.7 to 112
n-amyl acetate (628-63-7).....	1.....	79.2
1-butanol (71-36-3).....	2.....	79.2
n-butyl acetate (123-86-4).....	2.....	64 to 112
diethyl ether (60-29-7).....	1.....	267.8
2-ethoxyethanol (110-80-5).....	14.....	52 to 112
ethyl acetate (141-78-6).....	3.....	64 to 112
isobutyl alcohol (78-83-1).....	4.....	55 to 112
methyl isobutyl ketone (108-10-1).....	17.....	7.2 to 112
tetrahydrofuran (109-89-9).....	11.....	4.5 to 112

¹ Source: USEPA "Household Solvent Products: A National Usage Survey." EPA-OTS 560/5-87-005. 1987. (Ref. 35).

² Source: Verser, Inc., Springfield, VA. (Ref. 10).

The number of products in which each chemical was present ranged from 1 to 51. Based on the reported usage, the potential number of consumers exposed to a single product ranged from 3.7 to 112 million (Refs. 5, 6, 9, and 10).

Many solvents also have a high potential for acute and chronic exposure in the workplace due to their high production volumes and widespread use, as well as the high volatility and ability to penetrate the skin mentioned

above. Table 3 presents data on occupational exposure taken from the National Occupational Exposure Survey (NOES), conducted by NIOSH from 1981-1983, and based on field surveys of 4490 facilities.

TABLE 3.—OCCUPATIONAL EXPOSURE, PRODUCTION, VAPOR PRESSURE

Name/CAS No.	NOES ¹	Annual production ² (pounds)	Vapor pressure ³
acetone (67-64-1).....	1,510,107	2,458,000,000	231.5
n-amyl acetate (628-63-7).....	172,440	12,029,800	9.7
1-butanol (71-36-3).....	794,284	1,854,126,000	6.7
n-butyl acetate (123-86-4).....	720,812	194,845,000	150.0
diethyl ether (60-29-7).....	175,489	55,000,000	442.0
2-ethoxyethanol (110-80-5).....	233,418	121,808,000	5.6
ethyl acetate (141-78-6).....	375,906	257,348,000	93.6
isobutyl alcohol (78-83-1).....	192,949	165,459,000	10.4
methyl isobutyl ketone (108-10-1).....	467,763	225,312,000	19.8

TABLE 3.—OCCUPATIONAL EXPOSURE, PRODUCTION, VAPOR PRESSURE—Continued

Name/CAS No.	NOES ¹	Annual production ² (pounds)	Vapor pressure ³
tetrahydrofuran (109-99-9)	303,049	154,000,000	132.0

¹ National Occupational Exposure Survey, Number of occupationally exposed employees (Ref. 7).

² Source: Ref. 32.

³ Vapor pressure in mmHg per CHEMFATE (Ref. 2).

Using the NOES data, the number of workers potentially exposed to each of these solvents ranges from 172,440 to 1,510,107 (Ref. 2). The annual production of the 10 solvents, as shown in Table 3, is very high, ranging from 12 million to 2.4 billion pounds (Ref. 32). Also in Table 3 are vapor pressure values ranging from 5.6 to 442. Vapor pressure

values indicate volatility and the potential for exposure by inhalation.

C. Presence in and Release to the Environment

Presence in and release to the environment also contribute to the potential for chronic exposure to solvents. Nine of the solvents have been

found to be present in various environmental media (ground water, surface water, drinking water, air, effluent) at survey sites throughout the United States. The following Table 4 presents the measured concentration ranges of contaminants found at some of these sites.

TABLE 4.—PRESENCE IN AND RELEASE TO THE ENVIRONMENT

Name/ CAS No.	Environmental Media ¹	Concentration Range ² (in environmental media)	Annual Release ³
acetone (67-64-1)	A	0.3 to 6.5 ppb	195
	DW	NQ	
	E	6 to 2501 ppb	
	SW	1 to 4 ppb	
<i>n</i> -amyl acetate (628-63-7)	E	26 to 31 ppm	
1-butanol (71-36-3)	A	34 to 445 ppb	36
	E	16 ppm	
	E(DS)	210 ppm	
	SW	NQ	
<i>n</i> -butyl acetate (123-86-4)	A	3 µg/m ³	
	E	10 ppb	
diethyl ether (60-29-7)	A	NQ	
	DW	NQ	
	E	10 to 100 ppb	
	GW	2.5 ppb	
	SW	1 to 10 ppb	
2-ethoxyethanol (110-80-5)			2.9
ethyl acetate (141-78-6)	DW	NQ	
	E	NQ	
	SW	1 ppb	
isobutyl alcohol (78-83-1)	A	2.5 mg/m ³	
	DW	NQ	
methyl isobutyl ketone (108-10-1)	A	270 ppt	29
	A(DS)	0.5 - 13 ppm	
	E	0.2 to 105 ppm	
	GW(DS)	172 to 263 ppb	
	SW	NQ	
tetrahydrofuran (109-99-9)	E	0 to 450 ppm	
	SW	1 to 318 ppb	

¹ A = Air, DW = Drinking Water, DS = Disposal Site, E = Effluent, GW = Ground Water, SW = Surface Water.

² Concentration data is from Hazardous Substances Databank printout (Ref. 28). NQ = Not Quantified, but detected.

³ 1987 Environmental Release in millions of pounds per year per the Toxics-Release Inventory (Ref. 8).

A few of the survey sites are near disposal sites, but most are sites with even a greater potential for exposure to the general public.

The annual release to the environment of 4 of these solvents, as reported to EPA, ranges from 2.9 to 195 million

pounds (Ref. 8). Table 4 lists release levels of these 4 solvents. It is also worthy of note that 3 of these solvents are among the Toxics Release Inventory's (TRI) top 25 chemicals emitted into the air in 1987 (Ref. 1).

D. Neurotoxicity

In general, acute exposure to organic solvents affects the central nervous system by causing the anesthetic effects of drowsiness, lack of coordination, and narcosis, which although they may have

no discernable permanent effects on health, may increase the risk of accidents (Ref. 4). With longer exposure solvents may have neurotoxic effects on memory, learning, and performance which can be permanent. These effects are less well understood as is the effect of chronic, low-level exposure (Ref. 4).

Given the general neurotoxicity effects of organic solvents, EPA considers that the appropriate TSCA guidelines to screen for all aspects of neurotoxicity are the Functional Observational Battery (FOB; 40 CFR 798.6050), Motor Activity (MA; 40 CFR 798.6200), Neuropathology (NP; 40 CFR 798.6400), and the Schedule-Controlled Operant Behavior test (SCOB; 40 CFR 798.6500). EPA reviewed the available literature to determine if adequate and reliable data exist on these 10 substances for these types of neurotoxicity and neurobehavioral endpoints. EPA also reviewed existing data on these substances for other neurotoxic endpoints. A discussion of the results of this review follows:

No studies were located in the available literature regarding neurotoxicological effects in either humans or animals for three solvents: *n*-amyl-acetate, isobutyl alcohol, and tetrahydrofuran (Ref. 3).

Studies were identified for the other 7 solvents, including acetone, 1-butanol, *n*-butyl acetate, diethyl ether, 2-ethoxyethanol, ethyl acetate, and methyl isobutyl ketone but these studies did not provide adequate data to assess neurotoxic effects which could be obtained by requiring testing under the four TSCA guidelines for neurotoxicity mentioned above (Ref. 3).

1. *Acetone*. Only acute human and animal studies were identified for acetone. The study in human volunteers by Dick et al. (Ref. 11) indicated that a 4-hour exposure to 250 ppm acetone produced a small decrease in the auditory tone discrimination in both sexes and a significant change in the profile of mood states in men.

Bruckner and Peterson (Ref. 12) examined unconditioned performance and reflexes in male rats exposed to 4 doses of acetone from 12,600 to 56,600 ppm for 3 hours. A concentration-related decrease was observed in the mean score of the test battery consisting of wire maneuver, visual placing, grip strength, tail pinch, and righting reflex. Although this study evaluated the animals for the endpoints considered by the functional observational battery, only male mice were studied and only for an acute dose.

Glowa and Dews (Ref. 13) assessed the effects of 4 doses of acetone from 1,000 to 56,000 ppm which were

sequentially administered at 30-minute intervals to male mice. The authors found a dose-related decrease in schedule-controlled response. This study is inadequate because it exposed the same animals to more than one substance. Also, this study does not satisfy the neurotoxicity data needs because it is an acute study and only male mice were tested (Ref. 3).

2. *1-butanol*. Only acute animal studies were identified that examined the neurotoxic properties of 1-butanol. Wallgren (Ref. 14) assessed motor coordination in rats by testing their ability to balance in a sliding plane before and after the oral administration of 4.5 g/kg of 1-butanol. Wallgren's results suggest that 1-butanol affects motor control because of the animals' significantly impaired ability to maintain their balance. Maickel and Nash (Ref. 15) examined the motor performance of male mice in a rotarod system after administration of 1-butanol at 3 dose levels from 0.5 to 2.0 g/kg. 1-Butanol was found to induce a dose-related impairment in motor performance which was suggested by the authors as due to a generalized central nervous system (CNS) depression. This study does not satisfy the information needs for motor activity because only male mice were tested and the test was not comparable to that required by the TSCA guideline (Ref. 3).

DeCeaurriz et al. (Ref. 16) exposed male mice to 4 air concentrations of 1-butanol from 470 to 965 ppm for 4 hours and evaluated them in the behavioral despair swimming test. The authors found that 1-butanol prolongs the escape-directed activity in a dose-related manner. Schulze (Ref. 17) treated rats with 1 daily injection of 39 mg/kg 1-butanol for 4 consecutive days and found a significant increase in the mean landing foot splay scores (an index of ataxia). These studies do not satisfy the neurotoxicity data needs because they are acute studies and only male mice were tested.

3. *n-butyl acetate*. Only one review by Toy (Ref. 18) was found regarding the health effects in animals of *n*-butyl acetate. No neurotoxic effects attributed to *n*-butyl acetate were evaluated in this review.

4. *Diethyl ether*. Both human and animal studies were found on the neurotoxic effects of diethyl ether. Two acute human studies looked at the sensory evoked response induced by stimulation of the ulnar nerve in 17 male volunteers. In the first study by Hosick et al. (Ref. 19), subanesthetic concentrations (1.0 to 1.5 percent, v/v in air) of diethyl ether suppressed in a dose-related manner, the late activity of

sensory potentials recorded in the contralateral postRolandic area (C2P) and at a midline position 8 cm anterior to the vertex (M8A). In the second study by Clark et al. (Ref. 20), a concentration that induced anesthesia (4 percent diethyl ether) completely abolished the sensory evoked responses in C2P and M8A. Both studies were aimed at determining possible central nervous system mechanisms involved in anesthesia. While these tests provide information on the anesthetic effects on sensory systems, they do not provide a broader picture of neurotoxicity.

Essman and Jarvik (Ref. 21) studied the effect of diethyl ether on the acquisition of an avoidance response in male mice. The results showed that ether anesthesia, induced immediately after an electric shock, effectively interfered with the acquisition of an avoidance response, but if the mice were anesthetized 1 hour after the shock was given, the avoidance response was retained. A similar acute study by Wimer and Huston (Ref. 22) showed that exposure to diethyl ether at concentrations not resulting in loss of the righting reflex, significantly enhanced the performance of a previously learned task. Both studies point out the importance of the duration of the exposure (level of anesthesia achieved) in the assessment of schedule-controlled operant behavior tests. However, both studies are inadequate to provide the information on subchronic schedule-controlled operant behavior (SCOB) because the tests were not comparable to the TSCA guideline for SCOB, the exposure duration was not subchronic, and only male mice were tested.

Several studies, designed to examine the central nervous system effects of anesthetic levels of diethyl ether in animals, were identified. Concentrations of diethyl ether that produced a very deep stage of anesthesia in cats also induced epileptiform activity (Ref. 23). In rats, diethyl ether decreased spontaneous electroencephalograph (EEG) spikes recorded from the dorsal area of the hippocampus, and at anesthetic doses completely abolished this activity (Ref. 24). In rats and cats, a concentration of 8 percent (v/v in air) diethyl ether suppressed excitatory responses in the midbrain reticular formation (Ref. 25). These studies do not satisfy the neurotoxicity data needs because only anesthetic doses were used.

5. *2-ethoxyethanol*. A developmental neurotoxicity study was located which evaluated the neurotoxic effects of prenatal exposure to 2-ethoxyethanol.

B.K. Nelson et al (Ref. 30) exposed rats to 100 ppm 2-ethoxyethanol and found statistically significant changes in the offspring in the rotorod test, the activity wheel test, and avoidance conditioning. At 200 ppm, a maternally toxic dose, even greater alterations were seen in these tests (Ref. 31). These studies do not satisfy the data needs for neurotoxicity because they only evaluate the effects of prenatal exposure to 2-ethoxyethanol.

6. *Ethyl acetate*. Only animal studies were located regarding the acute neurotoxic effects of ethyl acetate. Glowa and Dews (Ref. 13) assessed the effects of ethyl acetate on a schedule-controlled response test (the interruption of a photocell beam located behind a nose-poke hole) in male mice. The study showed that at 5 concentrations from 300 to 3,000 ppm, ethyl acetate decreased the schedule-controlled response in a dose-related manner. This study is inadequate because it exposed the same animals to more than one substance. Also, only male mice were studied and the test is not equivalent to the TSCA guideline for SCOB.

Tham et al. (Ref. 26) examined the neurological effects of intravenous injection of ethyl acetate in rats and found that it depressed the vestibulo-ocular reflex (VOR) and thereby the equilibrium system of the animals. It was suggested by the authors that the depression of the VOR was caused by an interaction of the solvent with central pathways in the reticular formation and the cerebellum. This study is not comparable to those which would be done according to the TSCA guidelines for neurotoxicity testing because the route of administration was by injection instead of the expected route of human exposure.

7. *Methyl isobutyl ketone*. A developmental toxicity study was located which reported a neurotoxic effect after exposure to methyl isobutyl ketone. In rats and mice exposed to 3,000 ppm methyl isobutyl ketone, neurotoxicity was demonstrated in the dams by partial hindlimb paralysis (Ref. 29). This study does not satisfy the neurotoxicity data needs because it did not evaluate the range of endpoints which are normally required by the TSCA guidelines.

In summary, neurotoxicity data were not identified for three solvents. The other seven solvents had no subchronic neurotoxicity data and the acute and developmental data, although adequate to raise concern for neurotoxicity, were not adequate to evaluate the effects of acute or subchronic exposure to the extent that would have been achieved if

the TSCA or equivalent state-of-the-art guidelines had been followed.

III. TSCA Section 4(a) Findings

The proposed neurotoxicity testing is based on the authority of section 4(a)(1)(A) and (B) of TSCA. EPA finds that: available data indicate that 6 of the substances may present an unreasonable risk of injury to human health; all 10 substances are produced in substantial quantities; there is or may be significant or substantial human exposure to all 10 substances; there is or may be substantial environmental release of 4 of these substances; there are insufficient data and experience to determine or predict the neurotoxic effects from manufacturing, processing, use, and disposal of these substances; and testing is necessary to develop these data.

EPA is currently in the process of developing a general policy under TSCA section 4(a)(1)(B) (the "B" policy) in which it will articulate its criteria for making findings under this provision. The "B" policy is being developed in response to the April 12, 1990 decision in *CMA v. EPA* (Ref. 38) in which the Court of Appeals for the Fifth Circuit remanded the TSCA section 4 rule for cumene to EPA to "articulate the standards or criteria on the basis of which it found the quantities of cumene entering the environment from the facilities in question to be 'substantial' and human exposure potentially resulting to be 'substantial'." Although not mandated by the cumene decision, EPA also will be addressing the criteria for "substantial production" and "significant human exposure." EPA intends to publish the criteria for public comment, but has not yet developed such a Federal Register notice.

To avoid delay, EPA has decided to propose this neurotoxicity test rule under TSCA section 4(a)(1)(B) without waiting for the "B" policy to be completed and published in the Federal Register. The Court in *CMA v. EPA* (Ref. 38) made it clear that EPA need not adopt a definition applicable to all cases, but may choose to proceed on a case-by-case basis, if it rationally explains its exercise of discretion. Thus, because this proposal articulates the criteria used in making findings under TSCA section 4(a)(1)(B) for these substances, it is not necessary to wait for publication of a generic policy before proposing this test rule.

TSCA does not provide EPA with much guidance on what criteria and standards should be used in making "B" findings. The statute does not define the terms "significant" or "substantial." The policy section of TSCA, however, makes

it clear that Congress considered testing of chemical substances to be an important aspect of the Act. This section provides:

adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.

The legislative history of TSCA also provides some guidance on what criteria are to be used in making "B" findings. The legislative history states that "[t]he conditions specified in [TSCA] section 4(a)(1)(B) reflect the Committee's recognition that there are certain situations in which testing is desirable even though there is an absence of information indicating that the substance or mixture may be harmful" (Ref. 39) and "there are certain situations in which testing should be conducted even though there is an absence of information indicating that the substance or mixture per se may be hazardous" (Ref. 40). The legislative history also provides that EPA "is not limited to consideration of sheer volume of production or exposure at a specific point in time. The duration of exposure, the level of or intensity of exposure at various periods of time, the number of people exposed, or the extent of environmental exposure are among the considerations which may be relevant in particular circumstances" (Ref. 39). EPA believes that it is reasonable to interpret the duration of exposure and level of, or intensity of exposure as relating to "significant" human exposure, the number of people exposed as relating to "substantial" human exposure, and the extent of environmental exposure as relating to "substantial" quantities of environmental release.

All 10 of the substances in this proposal are produced in quantities exceeding 12 million pounds per year. EPA is reserving discussion on what it considers to be the minimum production volume that can be considered "substantial" until it publishes its "B" policy. Nevertheless, EPA finds that 12 million pounds per year clearly is above the minimum level that can be considered "substantial." EPA believes it is reasonable to interpret substantial production to mean large production, and that 12 million pounds is a large amount of production. Moreover, production information reported in connection with the TSCA section 8(b) inventory of the substances in commerce shows that only 4.8 percent of the listed substances have production volumes over 10 million pounds,

together accounting for over 95 percent of the total production of all substances produced in the United States (Ref. 41). EPA believes that it is reasonable to conclude that this small group of substances (i.e., the top 4.8 percent according to production volume), which account for the vast majority of all production, clearly are substances with substantial production.

EPA believes that the term "substantial" used in connection with environmental release is intended to capture substances with extensive release to the environment, which in itself would be sufficient reason to require testing in the absence of any information that the substance may be hazardous to human health or the environment. In other words, as with substantial production, release of substantial quantities means large release. The four substances for which substantial release findings are made are all released in quantities exceeding 1 million pounds per year. EPA finds that 1 million pounds of release to the environment is a sufficiently large amount of release that EPA should require testing even in the absence of any hazard information. Moreover, the Toxics Release Inventory (TRI), compiled under section 313 of the Emergency Planning and Community Right-to-Know Act (Ref. 42), shows that only 37 percent of the listed substances have releases over 1 million pounds, but account for over 99 percent of the total reported releases on the TRI by volume released. Because the TRI does not include all substances, less than 37 percent of all substances would have releases above 1 million pounds. EPA believes that it is reasonable to conclude that this small group of substances (i.e., less than 37 percent), which accounts for over 99 percent of all releases, clearly are substances with substantial releases.

EPA believes that it is reasonable to interpret the term "substantial human exposure" to mean widespread human exposure, or in other words, exposure to a large number of people. Available consumer data indicate that at least 3.7 million consumers are exposed to each of the subject substances. EPA believes that exposure to 3.7 million people is substantial exposure because where millions of people are exposed to a chemical substance, it is reasonable that EPA should have data on the potential hazards associated with the substance so that EPA can implement appropriate risk management efforts where necessary to protect the public against unreasonable risk.

Moreover, at least 172,000 workers are believed to be exposed to each of the 10 subject substances. EPA believes that exposure to 172,000 workers is substantial exposure. As a general matter EPA has found that workers tend to be subject to routine or episodic exposure over a long period of time. The Court in *CMA v. EPA* recognized that there could be some overlap between substantial and significant human exposure: "it is not necessarily clear that 'significant' and 'substantial' as used in clause (II) must be understood in a way that prevents any overlap in their respective meanings or requires that any factor relevant to one be necessarily irrelevant to the other" (Ref. 38, n. 17). Thus, exposure, to be considered substantial, does not have to be as widespread for workers as for consumers or the general population. EPA believes that exposure to 172,000 workers is widespread enough to necessitate testing to determine the potential hazards of the substances to evaluate whether worker protection, or other risk management efforts are necessary.

1. *The 10 substances are or will be produced in substantial quantities.* All of the substances subject to this proposed test rule are listed on the TSCA Section 8(b) Inventory. Other sources of more recent production data have been evaluated to update the TSCA inventory data (Ref. 32). EPA has reviewed these data and has found that the reported production volume of each substance (12 million to 2.4 billion pounds per year) is substantial.

2. *There is or may be substantial human exposure to each of the substances.* EPA believes there is substantial occupational exposure to each of these substances. The NOES data indicate that over 172,000 workers are exposed to each of these substances. Exposure also may be enhanced given the propensity of these substances to penetrate the skin and to have high volatility, which facilitates inhalation. Available data on skin absorption and the vapor pressures of these substances support this position. EPA also believes there is potential for substantial consumer exposure to these substances from their widespread presence in consumer products. EPA has determined that each of these substances is present in 1 to 51 consumer products and has estimated that at least 3.7 million consumers are exposed to each product. EPA finds that exposure to over 172,000 workers and 3.7 million consumers is "substantial" as that term is used in TSCA section 4(a)(1)(B).

3. *There is or may be substantial quantities of four substances released to the environment.* Four of the substances (acetone, 1-butanol, 2-ethoxyethanol, and methyl isobutyl ketone) are listed on EPA's Toxics-Release Inventory and have been reported to be released to the environment in quantities exceeding 1 million pounds per year. EPA finds that this amount of release is "substantial" as that term is used in TSCA section 4(a)(1)(B).

4. *Activities involving 6 of the substances may present an unreasonable risk of injury to human health.* In addition to the findings made under section 4(a)(1)(B)(i), for all the subject chemicals, EPA also finds under section 4(a)(1)(A)(i) that the neurotoxicity studies discussed in Unit II for acetone, 1-butanol, diethyl ether, 2-ethoxyethanol, ethyl acetate, and methyl isobutyl ketone and the worker and consumer exposure to these substances indicate that the manufacturing, processing, use, and disposal of these substances may present an unreasonable risk of injury to human health from neurotoxicity. The finding that acetone may present a risk is based on the human study which showed a decrease in auditory tone discrimination after a 4-hour exposure to 250 ppm acetone (Ref. 11) and the dose-related functional decrements observed in rats and mice after exposure to 1,000 to 56,000 ppm acetone (Refs. 12 and 13). The finding that 1-butanol may present a risk is based on its observed impairment of motor control in rats (Refs. 14 and 17) and motor performance in mice (Refs. 15 and 16). The finding that diethyl ether may present a risk is based on its interference with the acquisition of an avoidance response in mice (Ref. 21). The finding that 2-ethoxyethanol may present a risk is based on the alteration of motor performance and avoidance conditioning in the offspring of rats exposed to 100 and 200 ppm (Refs. 30 and 31). The finding that ethyl acetate may present a risk is based on the dose-related decrease in a schedule-controlled response in mice after exposure to 300 to 3,000 ppm (Ref. 13). Also, intravenous injection of ethyl acetate depressed the vestibulo-ocular reflex in rats (Ref. 26). The finding that methyl isobutyl ketone may present a risk is based on the hindlimb paralysis seen in rats and mice exposed to 3,000 ppm (Ref. 29).

5. *Insufficient data and experience.* Under section 4(a)(1)(A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience to reasonably determine or predict the potential neurotoxic effects from acute and

subchronic exposures from manufacturing, processing, use, and disposal.

EPA believes that the guidelines found at 40 CFR part 798 represent state-of-the-art methodology and form the basis for a valid and scientifically acceptable test standard for evaluating the neurotoxicity of these substances. The available studies are not acceptable to EPA because they do not conform with the guidelines as detailed in the following Table 5.

TABLE 5.—DATA INSUFFICIENCY FINDINGS UNDER TSCA 4(A)(1)(A)(ii) AND (B)(ii)

Name/CAS No.	Data Insufficiency (Notes)	References
acetone (67-64-1)	(a).....	12
	(a,b,c,d).....	13
<i>n</i> -amyl acetate (628-63-7)	(g).....	
	(a,c).....	15
1-butanol (71-36-3)	(g).....	
	(a,c,d).....	21
<i>n</i> -butyl acetate (123-86-4)	(a,c,d).....	
	(a,c,d).....	22
diethyl ether (60-29-7)	(e,f).....	30
	(a,c,d).....	
2-ethoxyethanol (110-90-5)	(e,f).....	31
	(a,b,c,d).....	13
ethyl acetate (141-78-6)	(g).....	
isobutyl alcohol (78-83-1)	(f).....	29
methyl isobutyl ketone (108-10-1)	(g).....	
tetrahydrofuran (109-99-9)	(g).....	

Notes:

- Only male mice were tested; no females were tested.
- Animals were exposed to more than one chemical.
- Test was not equivalent to the TSCA guideline.
- Not a subchronic test.
- Provided data on effects to offspring only.
- This is primarily a developmental toxicity test.
- No study addressing neurotoxicity was found.

6. *Necessity of testing.* Under section 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing each of these substances is necessary to develop such data for neurotoxicity. EPA believes the data resulting from the proposed testing will be relevant to a determination as to whether manufacturing, processing, use, and disposal of these substances does or does not present an unreasonable risk of injury to human health.

IV. Proposed Rule

A. Proposed Testing and Test Standards

Given the section 4(a)(1) findings for the 10 substances, EPA has the authority

to require other health effects testing for which there is an insufficiency of data and for which testing is necessary. However, as a matter of policy, EPA is proposing only neurotoxicity testing for the substances included in this proposed rule at this time to focus on the deficiency in neurotoxicity data. EPA may, in the future, find other data deficiencies for these substances and propose other tests.

Functional observational battery, motor activity, neuropathology, and schedule-controlled operant behavior studies are proposed for the 10 substances. Although the schedule-controlled operant behavior test has in the past typically been required under EPA's testing policy as a second-tier test, it is proposed as a first-tier test in this rule because of EPA's desire to obtain data on the effects of solvents on learning, memory, and performance. The studies are proposed to be conducted in accordance with EPA's TSCA Good Laboratory Practice (GLP) Standards in 40 CFR part 792 and the specific TSCA test guidelines as enumerated in 40 CFR part 798, as amended in this proposed rule.

EPA is proposing that these 10 substances undergo acute and subchronic testing according to the TSCA test guidelines at 40 CFR 798.6050 and 798.6200. EPA is also proposing that these 10 substances undergo subchronic testing using the TSCA test guidelines at 40 CFR 798.6400 and 798.6500. The studies should be performed in rats with inhalation as the route of administration. The duration of exposure for acute testing would be 6 hours per day for 1 day; duration of exposure for subchronic testing would be 6 hours per day for 5 days per week for 13 weeks (90 days).

EPA is proposing that the above-referenced neurotoxicity test guidelines, and any modifications to these guidelines, be the test standards for testing these substances.

B. Test Substances

EPA is proposing that the purity of the test substances be 99 percent or greater. EPA believes that the percent purities listed in Table 6 are readily available.

TABLE 6.—AVAILABLE PURITY OF TEST SUBSTANCE

Substance/CAS No.	Available percent purity
acetone (67-64-1).....	99.9
<i>n</i> -amyl acetate (628-63-7).....	99.0
1-butanol (71-36-3).....	99.9
<i>n</i> -butyl acetate (123-86-4).....	99.9

TABLE 6.—AVAILABLE PURITY OF TEST SUBSTANCE—Continued

Substance/CAS No.	Available percent purity
diethyl ether (60-29-7).....	99.9
2-ethoxyethanol (110-90-5).....	99.0
ethyl acetate (141-78-6).....	99.9
isobutyl alcohol (78-83-1).....	99.9
methyl isobutyl ketone (108-10-1).....	99.5
tetrahydrofuran (109-99-9).....	99.5

EPA has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the substances themselves. This requirement lessens the likelihood that any effects seen are due to impurities or additives.

C. Persons Required to Test

Because of the findings in Unit III, EPA is proposing that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process one or more of the named test substances, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. This period is defined in 40 CFR 791.3(h). Byproduct manufacturers and importers of one or more of these substances would be considered manufacturers under this rule. As explained in 40 CFR part 790, initially, manufacturers but not processors of one or more of these substances would be required to submit letters of intent or exemption applications. Pursuant to a recent amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications initially. Such manufacturers should consult the Federal Register of May 7, 1990 (55 FR 18881) for further details.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for these substances. EPA is interested in evaluating the effects attributable to the substances themselves and has specified relatively pure substances for testing.

D. Reporting Requirements

As required in 40 CFR 799.10, all data developed under the final rule would be conducted and reported in accordance with its TSCA GLP Standards, which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(C), EPA is proposing specific reporting requirements for each of the

proposed test standards as follows. Final reports of acute testing under 40 CFR 798.6050 and 798.6200 would be due 9 months from the effective date of the final rule; interim progress reports would be due 6 months from the effective date of the final rule.

Final reports for subchronic testing under 40 CFR 798.6050, 798.6200, 798.6400, and 798.6500 would be due 21 months from the effective date of the final rule; interim progress reports would be due at 6-month intervals beginning 6 months from the effective date of the final rule.

The effective date of the final rule will be 44 days after the date of publication of the final rule in the Federal Register.

According to a recent EPA report entitled "EPA Census of the Toxicological Testing Industry", laboratory availability for neurotoxicity testing should be adequate to accommodate the testing proposed in this rule (Ref. 33). If potential test sponsors can document that the neurotoxicity testing proposed in this rule needs to be staggered due to insufficient laboratory availability, thereby necessitating extending the reporting deadlines, EPA proposes the following. The substances with a section 4(a)(1)(A) finding would be tested first and ranked according to production volume as reported in this rule. Those substances with the largest production volumes would be required to be tested first, followed by those substances with the next largest volumes. The substances with only a section 4(a)(1)(B) exposure finding would be tested next and likewise ranked according to production volume as reported in this rule.

V. Issues for Comment

1. The following issues concern the criteria used to select chemicals for testing for this particular rule:

(a) Some have questioned whether, as a matter of policy, it is appropriate to use exposure alone as a testing criterion without specific indication of the potential hazard or potency of these substances. EPA solicits comment on this issue.

(b) They have also questioned the reasonableness of the burden/cost of testing for substances with only exposure evidence but no hazard information and suggested that there should be some minimum likelihood that a neurotoxic hazard exists before testing is required. EPA solicits comment on this issue.

(c) Questions have also been raised on the chemical selection criteria and numerical cutoffs EPA used to increase the likelihood of selecting chemicals for

this rule with widespread human exposure. These criteria are: (1) production level of 10 million pounds, (2) occupational exposure of 100,000 workers, (3) environmental release of 1 million pounds, (4) vapor pressure of 5 mmHg or greater, and (5) presence in consumer products. EPA solicits comment on this issue.

(d) Some have questioned the appropriateness of having different selection criteria for different testing endpoints. For example, the developmental/reproductive toxicity rule published today elsewhere in this issue of the Federal Register uses selection criteria different from those used under this rule. EPA solicits comment on this issue.

2. EPA solicits additional information on the neurotoxicity of the substances listed in this rule. Such information may cause EPA to alter its decision on the need for testing of one or more of these substances.

3. This rule would require that as many as 40 neurotoxicity tests be run concurrently. EPA believes that adequate laboratory capacity exists for conducting this testing within the reporting deadlines. Further, EPA believes that if it were to amend the rule periodically by requiring testing of an additional 15 to 20 substances per year, laboratory facilities would still be able to meet this testing demand. EPA requests comment on laboratory availability and the reporting requirements.

4. In the schedule-controlled operant behavior test, a multiple fixed ratio/differential reinforcement of low rate (DRL) schedule is specified. Although EPA believes that a multiple schedule would be useful to insure that potential effects aren't missed, an alternative schedule may provide comparable information. For example, the fixed-interval (FI) schedule may be a reasonable substitute for the DRL and would not foster compensatory mechanisms that would mask effects as might happen with the DRL. EPA requests comments on the DRL, FI, and other multiple schedules.

5. Butyl acetate should readily hydrolyze to 1-butanol (and acetic acid) once inhaled or absorbed through the skin. As such, testing either butyl acetate or 1-butanol should provide similar toxicological results. EPA solicits comment on whether or not it should require only one of these two substances to be tested. EPA solicits comment on whether data should be required on the hydrolysis rate to determine if a separate effect from butyl acetate may occur before being hydrolyzed to 1-butanol. Comments also

should be submitted on whether, if testing of only one were to be required, it should be 1-butanol which is produced at 10 times greater volume (1.8 billion vs. 194 million pounds per year) and to which an estimated 74,000 more workers are exposed, or butyl acetate, which has a greater vapor pressure and would, therefore, be more likely to provide higher exposure on an equal volume of use basis, and to which EPA estimates more consumers are exposed (64 to 176 million vs. 79 million). If only one of these substances is tested should the manufacturers of the other also be subject to the rule and share in the cost of testing since the data obtained would be used to assess the risk of both substances?

6. Ethyl acetate may readily hydrolyze to ethanol for which there exists sufficient neurotoxicity data. EPA solicits comment on whether it should accept the data on ethanol as predictive of the effects of ethyl acetate and whether data should be required on the hydrolysis rate (using a pharmacokinetics guideline comparable to those previously proposed by EPA) to determine if a separate effect from ethyl acetate may occur before being hydrolyzed to ethanol.

VI. Economic Analysis of Proposed Rule

EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on test sponsors as a result of the proposed testing (Ref. 32). The economic analysis estimates the costs of conducting the proposed testing for each of the 10 substances, including both laboratory and administrative costs, and evaluates the potential for adverse economic impacts as a result of these test costs, using a comparison between a substance's annualized test costs and its annual revenues.

The estimated total costs of testing for each of the substances are \$494,188 to \$875,100, including \$395,350 to \$700,080 in laboratory costs and \$98,838 to \$175,020 in administrative costs. This is based on the cost range for each test given in the following Table 7.

TABLE 7.—COST RANGE OF TSCA NEUROTOXICITY TESTS

Test	Cost Range in Dollars
Functional observational battery.....	
Acute, 40 CFR 798.6050.....	16,500 to 23,325
Subchronic, 40 CFR 798.6050.....	92,013 to 170,625
Motor Activity:.....	
Acute, 40 CFR 798.6200.....	18,625 to 26,388

TABLE 7.—COST RANGE OF TSCA NEUROTOXICITY TESTS—Continued

Test	Cost Range in Dollars
Subchronic, 40 CFR 798.6200.....	86,275 to 162,388
Neuropathology: Subchronic, 40 CFR 798.6400.....	112,638 to 200,125
Schedule-controlled operant behavior: Subchronic, 40 CFR 798.6500.....	168,138 to 292,250

Actual test costs per substance should be lower since EPA assumed that each test would be done independently of one another and the sponsors might choose to combine the subchronic tests for a given substance which would conserve both animals and resources.

To evaluate potential economic impacts of the proposed testing, test costs are annualized and compared with annual revenues. The annualized test costs, using a 7 percent cost of capital over a period of 15 years, are \$54,259 to \$96,081 for each of the ten substances.

Dividing these annualized costs by the appropriate production volumes in Table 3 for each substance, and then dividing these amounts by the appropriate price per pound in the following Table 8, the percent price increase per pound due to testing was estimated.

TABLE 8.—ECONOMIC ANALYSIS

Chemical/CAS No.	Chemical Price/Pound (Dollars)	Percent Chemical Price Increase/pound
acetone (67-84-1).....	0.310	0.0071 to 0.0126
n-amyl acetate (628-63-7).....	0.660	0.6834 to 1.2101
1-butanol (71-36-3).....	0.380	0.0077 to 0.0136
n-butyl acetate (123-86-4).....	0.430	0.0648 to 0.1147
diethyl ether (60-29-7).....	0.515	0.1916 to 0.3392
2-ethoxyethanol (110-80-5).....	0.750	0.0594 to 0.1052
ethyl acetate (141-78-6).....	0.410	0.0514 to 0.0911
isobutyl alcohol (78-83-1).....	0.380	0.0863 to 0.1528
methyl isobutyl ketone (108-10-1).....	0.450	0.0535 to 0.0948
tetrahydrofuran (109-99-9).....	1.220	0.0289 to 0.0511

Table 8 shows that for 9 of the 10 substances, unit test costs are substantially lower than one percent of price. For these 9 substances, it appears

that the costs of testing will have little significant adverse economic impact. In the case of n-amyl acetate, costs range from 0.68 to 1.21 percent of price, which is substantially higher than that of the other 9 substances (due to its lower production volume). In only the upper bound case, these costs may pose some potential for adverse impacts. If comments are received which indicate that the impacts are greater, a more comprehensive and detailed analysis will be conducted which more precisely predicts the magnitude and distribution of the expected impacts.

For a complete discussion of test cost estimation and potential for economic impact resulting from these costs, refer to the economic analysis which is contained in the public record for this rulemaking.

VII. Availability of Test Facilities and Personnel

EPA has determined that test facilities and personnel are available to perform the testing specified in this proposed rule (Refs. 27 and 33).

This rule would require concurrent neurotoxicity testing of 10 substances. EPA believes that space within the laboratories is available to adequately accommodate the 10 substances proposed for neurotoxicity testing. EPA also anticipates that laboratory capacity would increase to accommodate the demand created by future amendments to this rule.

VIII. Public Meeting

If requested, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call Mary Louise Hewlett, Chemical Testing Branch (202) 475-8162 by April 18, 1991. The meeting is open to the public, but active participation will be limited to EPA representatives and those who requested to comment. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

IX. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or similar designation on the face of each document or attachment in the comment which contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information which has been in the public file for more than 30 days to be in the public domain.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42134). In addition, each substance in the rule has a separate docket number. This record contains the basic information considered by EPA in developing this proposal and appropriate Federal Register notices. EPA will supplement this record as necessary.

A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Room G-004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8 am to noon, and 1 pm to 4 pm, Monday through Friday, except legal holidays.

The record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034; August 17, 1989).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31788; July 11, 1983).

(c) Notice responding to the Interagency Testing Committee's (ITC's) recommendation on methyl ethyl ketone. (47 FR 58025, December 29, 1982).

(d) Notice responding to the ITC's recommendation on toluene. (47 FR 56391, December 16, 1982).

(e) Notice responding to the ITC's recommendation on xylenes. (47 FR 56392, December 16, 1982).

(2) TSCA test guidelines cited as test standards for this rule.

(3) Communications before proposal consisting of:

(a) Contact reports of telephone conversations.

(b) Meeting summaries including RM1 meeting (July 12, 1990).

(4) Support documents consisting of:

(a) Economic impact analysis of NPRM for the substances contained in this proposed rule.

(5) Reports - published and unpublished factual materials including "Evaluation of TSCA guidelines for neurotoxicity testing." (April 14, 1987).

B. References

- (1) U.S. Congress, Office of Technology Assessment. Neurotoxicity: Identifying and Controlling Poisons of the Nervous System. Chapter 1. "Summary, Policy Issues, and Options for Congressional Action". OTA-BA-436. Washington, DC. US Government Printing Office. (April 1990).
- (2) Syracuse Research Corporation. Syracuse, NY. "Technical Support for Selection of Solvents for a Neurotoxicity Test Rule." Contract No. 68-D8-0117, Task 103. TR 89-218. (January 11, 1990).
- (3) Syracuse Research Corporation. Syracuse, NY. "Neurotoxicity Profile of Solvents." Contract No. 68-D8-0117, Task: 07. (July 31, 1990).
- (4) Casarett and Doull's Toxicology. Editors: Klaassen, C.D., Amdur, M.O. and Doull, J. Chapter 20: Toxic Effects of Solvents and Vapors. pp. 636-638. 3rd edition. (1986).
- (5) United States Environmental Protection Agency (USEPA). "Consumer exposure assessment." Memorandum from Conrad Flessner, Exposure Assessment Branch, to Catherine Roman, Chemical Testing Branch, Office of Toxic Substances (OTS), USEPA, Washington, DC. (July 16, 1990).
- (6) USEPA. "Consumer exposure assessment." Memorandum from Sidney Abel, Exposure Assessment Branch, to Catherine Roman, Chemical Testing Branch, OTS, USEPA, Washington, DC. (July 17, 1990).
- (7) NIOSH. National Institute for Occupational Safety and Health. National Occupational Exposure Survey (NOES). Computer printout. (March 29, 1989).
- (8) USEPA. Toxics-Release Inventory. EPA 560/4-89-006. Office of Pesticides and Toxic Substances, Washington, DC. (June 1989).
- (9) USEPA. "Consumer exposure assessment". Memorandum from Christina Cnalli, Exposure Assessment Branch, to Catherine Roman, Chemical Testing Branch, OTS, USEPA, Washington, DC. (July 17, 1990).
- (10) Versar, Inc., Springfield, VA. "Estimates of consumer exposure to ethyl ether". Memorandum from Carl D'Ruiz, Versar, Inc., to Conrad Flessner, Exposure Assessment Branch, OTS, USEPA, Washington, DC. (September 20, 1990).
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- (12) Bruckner, J.V. and Peterson, R.G. "Evaluation of toluene and acetone inhalant abuse. I. Pharmacology and pharmacodynamics". *Toxicology and Applied Pharmacology*. 61:27-38. (1981).
- (13) Glowa, J.R. and Dews, P.B. "Behavioral toxicology of volatile organic solvents. IV. Comparison of the rate-decreasing effects of acetone, ethyl acetate, methyl ethyl ketone, toluene, and carbon disulfide on schedule-controlled behavior of mice". *Journal of the American College of Toxicology*. 6:461-469. (1987).
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- (17) Schulze, G.E. "2,4-n-Butyl ester (2,4-D ester) induced ataxia in rats: Role for n-butanol formation". *Neurotoxicology and Teratology*. 10:81-84. (1988).
- (18) Toy, N.J. "Final report on the safety assessment of ethyl acetate and butyl acetate". *Journal of the American College of Toxicology*. 8:681-705. (1989).
- (19) Hosick, E.C., Clark, D.L., Adam, N., and Rosner, B.S. "Neurophysiological effects of different anesthetics in conscious man". *Journal of Applied Physiology*. 31: 892-898. (1971).
- (20) Clark, D.L., Hosick, E.C., and Rosner, B.S. "Neurophysiological effects of different anesthetics in unconscious man". *Journal of Applied Physiology*. 31: 884-891. (1971).
- (21) Essman, W.B., and Jarvik, M.E. "Impairment of retention for a conditioned response by ether anesthesia in mice". *Psychopharmacologia*. 2: 172-176. (1961).
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- (23) Mori, K., Mitani, H., and Fujita, M. "Epileptogenic properties of diethyl ether on the cat central nervous system". *Electroencephalography and Clinical Neurophysiology*. 30:345-349. (1971).
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- (25) Shimoji, K., Fujioka, H., Fukazawa, T., Hashiba, M., and Maruyama, Y. "Anesthetics and excitatory/inhibitory responses of midbrain reticular neurons". *Anesthesiology*. 61: 151-155. (1984).
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- (27) USEPA. "Evaluation of TSCA guidelines for neurotoxicity testing." Regulatory Impacts Branch, Office of Toxic Substances, USEPA, Washington, DC. (April 14, 1987).
- (28) Syracuse Research Corp., Syracuse, N.Y. Hazardous Substances Databank printout. (June 18, 1990).
- (29) Tyl, R.W., France, K.A., Fisher, L.C., Pritts, I.M., Tyler, T.R., Phillips, R.D., and Moran, E.J. "Developmental Toxicity evaluation of inhaled methyl isobutyl ketone in Fischer 344 rats and CD-1 mice." *Fundamental and Applied Toxicology*. 8:310-327. (1987).
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- (31) Nelson, B.K., Brightwell, W.S., and Setzer, J.V. "Prenatal interactions between ethanol and the industrial solvent 2-ethoxyethanol in rats: Maternal and behavioral teratogenic effects." *Neurobehavioral Toxicology and Teratology*. 4:387-394. (1982).
- (32) USEPA. "Economic impact evaluation of proposed multi-chemical rule for the testing of neurotoxicity." Economics and Technology Division, OTS, USEPA, Washington, DC. (July 25, 1990).
- (33) Booz, Allen Hamilton, Inc., Bethesda, MD. "EPA census of the toxicological testing industry." Prepared for the Office of Policy Analysis, OTS, USEPA, Washington, DC. (June 1990).
- (34) USEPA. "Selection of chemicals for testing under neurotoxicity endpoint rule." Memorandum from Sue McMaster, Toxic Effects Branch, to Catherine Roman, Chemical Testing Branch, OTS, USEPA, Washington, DC. (July 26, 1990).
- (35) USEPA. "Household Solvent Products: A National Usage Survey." EPA-OTS 560/5-87-005. (July 1987).
- (36) Scheuplein, R.J. and Blank, I.H. "Mechanism of percutaneous absorption. IV. Penetration of nonelectrolytes (alcohols) from aqueous solutions and from pure liquids." *Journal of Investigative Dermatology*. 60: 286-296. (1973).
- (37) Dugard, P.H., Walker, M., Mawdsley, S.J. and Scott, R.C. "Absorption of some glycol ethers through human skin in vitro." *Environmental Health Perspectives*. 57: 193-197. (1984).
- (38) Chemical Manufacturers Association, et.al. v. Environmental Protection Agency, 899 F.2d 344 (5th Cir. 1990).
- (39) H. Rept. 1341, 94th Cong. 2d Sess. (1976), at 18 reprinted in, A Legislative History of the Toxic Substances Control Act (Comm. Print 1976) ("Leg. Hist.") at 425.
- (40) H. Conf. Rept. 1679, 94th Cong. 2d Sess. (1976), reprinted in, Leg. Hist. at 674.
- (41) USEPA. Information Management Division, Confidential Data Branch. 1977 Chemical Commerce Information Search.
- (42) Toxics Release Inventory under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11023.

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would

not have an annual effect on the economy of at least \$100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely

to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to range from 499 to 6,984 hours per response (average of 2,400 hours per response). The estimates include 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0033), Washington, DC

20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Testing laboratories, Reporting and recordkeeping requirements, Testing.

Dated: February 25, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, chapter I, Subchapter R, part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By amending § 799.5050 by adding in CAS No. order, 10 designated substances and their appropriate testing requirements to read as follows:

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates	
60-29-7	diethyl ether					
	Health effects testing:					
	Acute neurotoxicity:					
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(-/-/-)
	Subchronic neurotoxicity:					
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(-/-/-)
	Neuropathology	§ 798.6400, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(-/-/-)
	Schedule-controlled operant behavior	§ 798.6500, except (d)(2)(i)(A), (6), (7) and (8)(v)	paragraphs	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(-/-/-)
67-64-1	acetone					
	Health effects testing:					
	Acute neurotoxicity:					
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(-/-/-)
	Subchronic neurotoxicity:					
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(-/-/-)

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(--/--)
71-36-3	1-butanol				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(--/--)
78-83-1	Isobutyl alcohol				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(--/--)
108-10-1	methyl isobutyl ketone				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(--/--)
109-99-9	tetrahydrofuran				
	Health effects testing:				

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Neuropathology	§ 798.6400, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Schedule-controlled operant behavior	§ 798.6500, except (d)(2)(i)(A), (6), (7) and (8)(v)	paragraphs	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo. (-/-/-)
110-80-5	2-ethoxyethanol				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Neuropathology	§ 798.6400, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Schedule-controlled operant behavior	§ 798.6500, except (d)(2)(i)(A), (6), (7) and (8)(v)	paragraphs	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo. (-/-/-)
123-86-4	<i>n</i> -butyl acetate				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Neuropathology	§ 798.6400, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo. (-/-/-)
	Schedule-controlled operant behavior	§ 798.6500, except (d)(2)(i)(A), (6), (7) and (8)(v)	paragraphs	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo. (-/-/-)
141-78-6	ethyl acetate				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo. (-/-/-)
	Subchronic neurotoxicity:				

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates	
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--/--)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--/--)
	Neuropathology	§ 798.6400, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--/--)
	Schedule-controlled operant behavior	§ 798.6500, except (d)(2)(i)(A), (6), (7) and (8)(v)	paragraphs	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(--/--/--)
628-63-7	<i>n</i> -amyl acetate					
	Health effects testing:					
	Acute neurotoxicity:					
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--/--)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(--/--/--)
	Subchronic neurotoxicity:					
	Functional observational battery	§ 798.6050, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--/--)
	Motor activity	§ 798.6200, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--/--)
	Neuropathology	§ 798.6400, except (d)(1)(i), (5) and (6)	paragraphs	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(--/--/--)
	Schedule-controlled operant behavior	§ 798.6500, except (d)(2)(i)(A), (6), (7) and (8)(v)	paragraphs	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(--/--/--)

[FR Doc. 91-5013 Filed 3-1-91; 8:45 am]

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Monday, March 4, 1991

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3 (1989 Compilation and Parts 100 and 101)	11.00	¹ Jan. 1, 1990
*4	15.00	Jan. 1, 1991
5 Parts:		
1-699	15.00	Jan. 1, 1990
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1200-End, 6 (6 Reserved)	17.00	Jan. 1, 1990
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10 Parts:		
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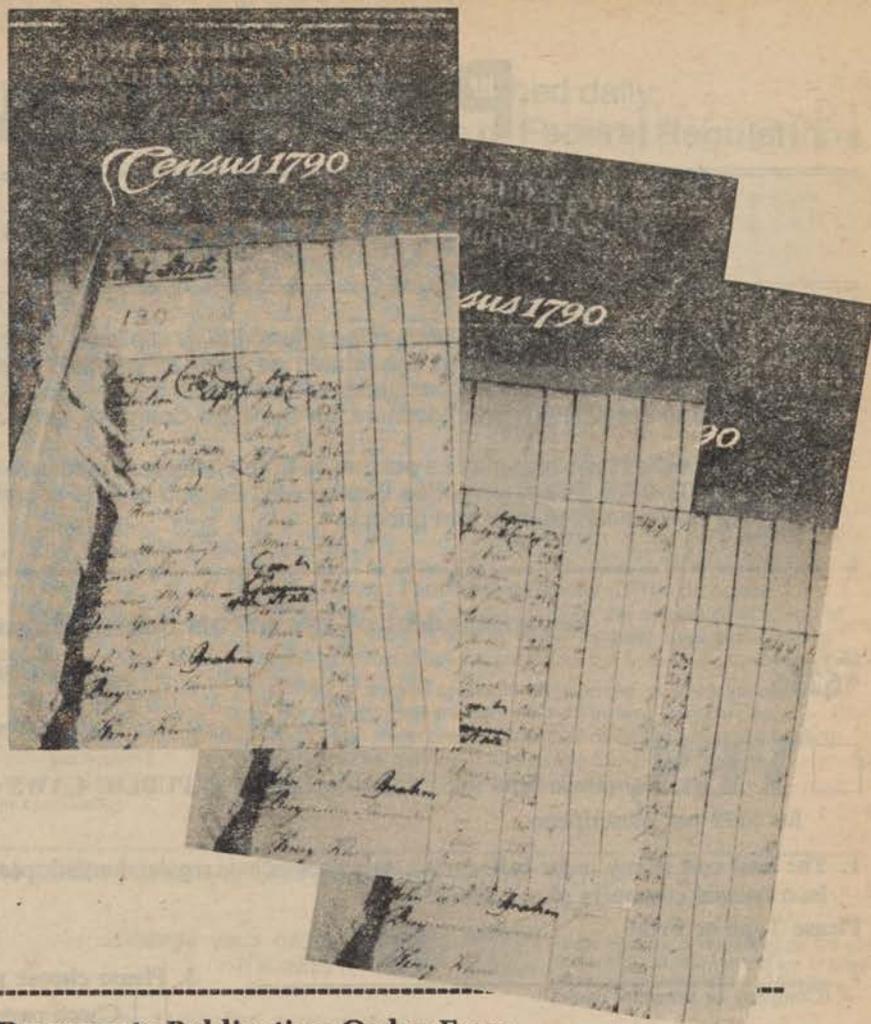
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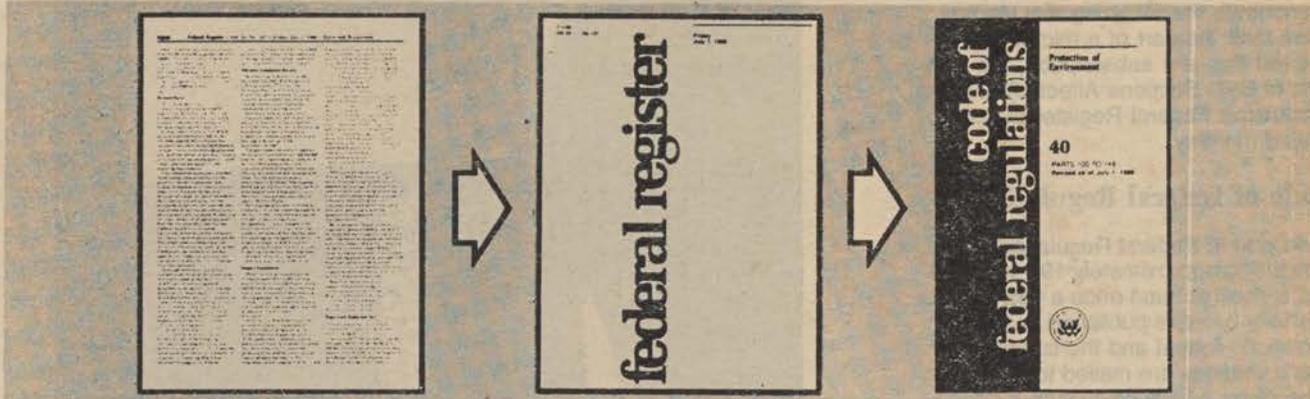
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