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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-53-AD; Amdt. 39-7043; AD 91-14-01]

Airworthiness Directives; British Aerospace (BAe), Limited Jetstream HP 137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BAe Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes equipped with Dunlop wheel and brake assemblies and Models 3101 and 3201 airplanes equipped with B.F. Goodrich wheel and brake assemblies. This action requires an inspection of the main landing gear wheel bearings, and replacement if found damaged; and the installation of an improved flanged wheel retention nut on the main landing gear wheels. The wheel bearings on two of the affected airplanes failed and the main landing gear wheels separated from the axle. A check of several other of the affected airplanes shows that the torque values of the wheel retaining nut were out of tolerance. The actions specified by this action are intended to prevent separation of the landing gear wheel from the airplane, which could result in loss of control of the airplane during high-speed operations.

DATES: Effective July 22, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1991. Comments for inclusion in the Rules Docket must be received on or before August 26, 1991.

ADDRESSES: BAe Jetstream Alert Service Bulletin 32-A-JA 910140, dated May 17, 1991, and BAe Service Bulletin 32-46, dated April 9, 1991, that are discussed in this AD may be obtained from British Aerospace, Manager Customer Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-53-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace (BAe), Limited Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes that are equipped with Dunlop wheel and brake assemblies. The CAA reports that the wheel bearings on two of the affected airplanes failed and the main landing gear wheels separated from the axle. A check of several other of the affected airplanes shows that the torque values of the wheel retaining nut were out of tolerance. This may lead to failure of the main wheel roller bearings, which may allow the outer race and main wheel to pass over the wheel nut and depart from the airplane.

British Aerospace (BAe) has issued BAe Jetstream Alert Service Bulletin (ASB) No. 32-A-JA 910140, dated May 17, 1991, which specifies inspection procedures for the main wheel bearings, and installation procedures for a flanged axle nut on BAe Limited Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. "Part 2—INSTALLATION OF FLANGED AXLE NUT" of the instructions in BAe ASB No. 32-A-JA 910140 references BAe Service Bulletin 32-46, dated April 9, 1991, which specifies procedures on refitting the wheel. The CAA classified these service bulletins as mandatory in order to assure the airworthiness of these airplanes in the United Kingdom. The airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the CAA, reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. The FAA has issued Supplemental Type Certificate (STC) SA 1332GL for the Model 3101 airplanes and STC SA 1412GL for the Model 3201 airplanes to allow B.F. Goodrich wheel and brake assemblies to be installed in place of Dunlap wheel and brake assemblies. The FAA has determined that since the affected airplanes equipped with B.F. Goodrich wheel and brake assemblies are of the same type design as those equipped with Dunlop wheel and brake assemblies, the following AD action should apply to BAe Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes equipped with Dunlop wheel and brake assemblies and BAe Jetstream HP 137 Mk1, and Jetstream Models 3101 and 3201 airplanes equipped with B.F. Goodrich wheel and brake assemblies.

Since the BAe Limited Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of this type design are equipped with only one Dunlop or B.F. Goodrich wheel and brake assembly per main landing gear, an emergency AD is being issued to prevent separation of the landing gear wheel from the airplane, which could result in loss of control during high-speed ground operations. The action requires an inspection of the

main landing gear wheel bearings, and replacement if found damaged; and the installation of an improved flanged wheel retention nut on the main landing gear wheels. These actions shall be done in accordance with BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991 and BAe Service Bulletin 32–46, dated April 9, 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–14–01 British Aerospace (BAE), Limited: Amendment 39–7043; Docket No. 91–CE–53–AD.

Applicability: Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers) that are equipped with Dunlop wheel and brake assemblies; and Jetstream Models 3101 and 3201 airplanes (all serial numbers) that are equipped with B.F. Goodrich wheel and brake assemblies, certificated in any category.

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

To prevent separation of the landing gear wheel from the airplane, which could result in loss of control during high-speed ground operations, accomplish the following:

(a) Within the next 100 landings, inspect the main landing gear wheel bearings for damage in accordance with the instructions in "Part 1—Mainwheel Bearing Inspection" of BAe Jetstream Alert Service Bulletin (ASB) No. 32–A–JA 910140, dated May 17, 1991. If any damage is found, prior to further flight, replace the bearings in accordance with the instructions in the applicable maintenance manual.

Note: If no record of landings is maintained, hours time-in-service (TIS) may be used with one hour TIS equal to two landings. For example, 50 hours TIS is equal to 100 landings.

(b) Within the next 500 landings, install a flanged axle nut in accordance with the instructions in "Part 2—Installation of flanged axle nut" of BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991. The criteria of paragraph (10) of these instructions shall be accomplished in accordance with the instructions in BAe Service Bulletin 32–46, dated April 9, 1991. Perform whichever of the following is applicable:

(1) If the airplane is equipped with Dunlop wheel and brake assemblies, perform torque loading of the axle nuts in accordance with the instructions in the "Appendix Torque Loading Axle Nuts" of BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991; or

(2) If the airplane is equipped with B.F. Goodrich wheel and brake assemblies, accomplish the following:

(i) While rotating wheel, torque axle nut to 50 foot-pounds to properly set bearings.

(ii) Loosen nut to zero torque.

(iii) While rotating wheel, retighten to 25 foot-pounds in one continuous rotation of the axle nut. Check to ensure locking holes are aligned.

(iv) If locking holes are not aligned, rotate nut to closest locking hole, and secure the axle nut and recheck to ensure locking holes are aligned.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(e) The inspection and installation required by this AD shall be done in accordance with BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991, and BAe Service Bulletin 32–46, dated April 9, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Manager Customer Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435–9100; Facsimile (703) 435–2628. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW. room 8401, Washington, DC.

This amendment becomes effective on July 22, 1991.

Issued in Kansas City, Missouri, on June 11, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15061 Filed 6–24–91; 8:45 am]

BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1600

Employee Responsibilities and Conduct; Collection of Debts by Salary Offset

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is proposing to revise its regulations on Employee Responsibilities and Conduct to include a subpart on procedures for the collection of debts by salary offset. This rule outlines the procedures to be followed by EEOC for collection of debts owed to the United States by present or former Commission employees under the Debt Collection Act of 1982 (Pub. L. 97–365), 5 U.S.C. 5514. The rule, in conjunction with appendices B and C of EEOC Order 475, "Procedures for the Collection of Debts by Salary Offset," will reflect the changes made to Federal claims collection by the Debt Collection Act of 1982.

DATES: The interim final rule is effective on June 25, 1991. Comments must be received by August 26, 1991.

ADDRESSES: Written comments should be addressed to Frances Hart, Executive Officer, Office of Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathleen Oram, Senior Attorney, or Daniel T. Riordan, Staff Attorney, at (202) 663–4669.

Copies of this interim final rule are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 was designed to increase the efficiency of government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of such debts. Appendix B to EEOC Order 475, entitled "Procedures for the Collection of Debts by Salary Offset," describes the procedures for collection of debts owed to the United States by present or former Commission employees by salary offset under 5 U.S.C. 5514. Appendix C describes the procedures for requesting and providing oral hearings arising from salary and administrative offset actions. The Office of Personnel Management (OPM) approved the procedures in appendices B and C upon the condition that the Commission publish regulations implementing the Debt Collection Act of 1982. Proposed subpart E to 29 CFR part 1600, 29 CFR 1600.735–501 to 519, describes the EEOC procedures for the collection of debts by salary offset, and, inter alia, who may make a request for salary offset to another agency, the form of the request, and the procedure for submitting the request.

The Commission has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291. It is a procedural rule relating to internal administration of Commission personnel matters. The Commission also certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that the proposed rule will not result in a significant impact on a substantial number of small employers. For this reason, a regulatory flexibility analysis is not required.

For the Commission,

Evan J. Kemp, Jr.,

Chairman.

Accordingly, it is proposed to amend 29 CFR part 1600 as follows:

PART 1600—[AMENDED]

1. It is proposed to revise the authority citation for 29 CFR part 1600 to read as follows:

Authority: E.O. 11122, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.; U.S.C. 5514; 5 CFR 550.1101 et seq.

2. It is proposed to add subpart E to part 1600 to read as follows:

Subpart E—Procedures for the Collection of Debts by Salary Offset

Sec.

Subpart E—Procedures for the Collection of Debts by Salary Offset

§ 1600.735–501 Purpose.

This subpart sets forth the procedures to be followed in the collection of debts owed to the United States by present or former Commission employees by salary offset under 5 U.S.C. 5514.

§ 1600.735–502 Scope.

(a) *Applicability.* (1) The procedures in this subpart apply to the collection of debts owed to the Commission or another federal agency by present or former Commission employees by offset against their basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay from the Commission or other agency pursuant to the offset authority in 5 U.S.C. 5514.

(2) The procedures in this subpart apply to the collection by salary offset of the following types of debts owed to the United States: Interest, penalties, fees, direct loans, loans insured and guaranteed by the United States, leases, rents, royalties, services, sales of real or personal property, fines and forfeitures (except those arising under the Uniform Code of Military Justice), erroneous payments of pay and all other similar sources.

(b) *Non-applicability.* The procedures in this subpart do not apply where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108). The procedures in this subpart also do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended, 25 U.S.C. 1 et seq., the Social Security Act, 42 U.S.C. 301 et seq., or the tariff laws of the United States.

(c) *Waiver requests and claims to the GAO.* The procedures in this subpart do not preclude an employee from

requesting waiver of a salary overpayment under 5 U.S.C. 5584, or any other similar provision of law, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(d) *Compromise, suspension, or termination under the Federal Claims Collection Standards.* Nothing in this subpart precludes the compromise, suspension, or termination of 5 U.S.C. 5514 salary offset collection actions, where appropriate, in accordance with the Federal Claims Collection Standards in 4 CFR chapter II.

§ 1600.735–503 Definitions.

For the purpose of this subpart, terms are defined as follows:

(a) *Agency* means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means an agency to which a debt is owed.

(c) *Debt* means an amount owed to the United Stated from sources that include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Deductions described in 5 CFR 581.105(b) through (f) will not be used to determine disposable pay subject to salary offset.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) *FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR chapter II.

(g) *FRMS* means Financial and Resource Management Services, EEOC Office of Management.

(h) *Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(i) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(j) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other applicable statute.

§ 1600.735–504 Notice of salary offset.

(a) Notice of the Commission's intent to collect a debt by salary offset shall be given at least 30 days in advance. The written notice shall include, inter alia, the following:

(1) The Commission's determination that a debt is owed, including origin, nature, and amount of the debt;

(2) The Commission's intention to collect the debt by means of deduction from the employee's current disposal pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy the Commission's records relating to the debt;

(6) The opportunity to establish a schedule for voluntary repayment of the debt agreeable to the Commission in lieu of an offset;

(7) The employee's right to an oral hearing, the method and time period for petitioning for a hearing, and the oral hearing procedures;

(8) The employee's right to request reconsideration of the validity of the indebtedness; and

(9) The employee's right to request waiver, forgiveness, or compromise and the standards involved for each.

(b) *Exception to the advance notice requirement.* Where an adjustment to pay arises out of an employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from the employee's pay and the amount to be recovered was accumulated over four pay periods or less, the advance notice provision in paragraph (a) of this section is not required. In such cases, the Commission's servicing Payroll Office, General Services Administration's National Payroll Center, will notify the employee in writing that because of the employee's election his or her pay will be reduced to cover the period between the effective date of the election and the first regular withholding, and that the employee may dispute the amount collected or request waiver of the debt by filing a request in writing with the Director of Financial and Resource Management Services.

(c) *Acknowledgment of receipt of advance notice.* Notice will be acknowledged in writing. A copy of the notice with the acknowledgment containing the debtor's original signature will be returned to the sender.

§ 1600.735–505 Request for reconsideration or request for consideration of waiver, compromise, or forgiveness.

A request for reconsideration or a request for consideration of waiver, compromise, or forgiveness must be submitted to the Director of FRMS, or his or her designee, within 15 calendar days of the issuance of the demand for payment. The Director of FRMS may extend the time limit for filing when the employee shows he or she was notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the limit. Any employee requesting reconsideration or consideration of waiver, compromise, or forgiveness will be given a full opportunity to present all pertinent documentation and written information supporting his or her request.

§ 1600.735–506 Reconsideration or consideration of waiver, compromise or forgiveness decision.

Decisions will be based upon the employee's written submissions supported by evidence of record and other pertinent available information. After consideration of all pertinent documented information, a written decision will be issued as to whether the debt is valid, and the amount demanded is correct, or whether it will be waived, compromised, or forgiven. The decision will also inform the employee of his or her right to an oral hearing; hearing procedures contained in § 1600.735–507(c) of this subpart shall be attached to the decision.

§ 1600.735–507 Oral hearing.

(a) *Right to an oral hearing.* After a decision is issued on an employee's request for reconsideration, or consideration of waiver, compromise, or forgiveness, the employee is entitled to an oral hearing upon request prior to salary or administrative offset, on any issue that raises a significant question as to the credibility or veracity of any individual(s) involved in his or her case. The decision whether such a genuine issue exists will rest solely with the Commission. Further, where a claim has been reduced to judgment, a hearing only on the payment schedule need be given. A hearing shall not be provided, however, where a payment schedule was established by written agreement between the employee and the Commission.

(b) *Request for hearing.* (1) A request for an oral hearing must be made within 30 calendar days from the date of the written decision on reconsideration or consideration of waiver, forgiveness, or compromise decision. Requests made after this time will be accepted where the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit, unless the employee is otherwise aware of it.

(2) A debtor must file a petition for a hearing in writing. The petition must identify and explain with reasonable brevity the facts, evidence, and witnesses that the debtor believes support his or her petition, state the relief requested, and include the signature and address of the petitioner or authorized representative.

(3) The timely filing of a petition for an oral hearing shall automatically stay the commencement of collection action.

(c) *Hearing procedures.* (1) The hearing shall be conducted by a hearing official who is not an employee of EEOC or otherwise under the control or supervision of the Chairman.

(2) A debtor may represent himself or herself or may be represented by another person, including an attorney during any portion of the hearing.

(3) Where possible, the hearing will be held in a Commission office close to the debtor's home or place of work. Hearings may be scheduled so that several cases can be heard at one location. In such cases, the hearings will be scheduled in a location centrally located to all requesting parties.

(4) A record or transcript of the hearing shall not be made.

(5) At the hearing, the employee and the Commission may introduce evidence and may call witnesses. The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. The hearing official may only permit the introduction of evidence that is relevant to the issues being considered. Witnesses shall testify under oath and may be cross-examined. The Commission has the burden of first presenting evidence on the relevant issues. The debtor then has the burden of presenting evidence regarding those issues.

(6) The hearing official shall issue a written opinion stating his or her decision with the rationale supporting the decision as soon as practicable after the hearing, but not later than 60 days after the timely filing of the petition requesting the hearing.

§ 1600.735–508 Method of collection.

A debt will be collected in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Commission agree in writing to alternate arrangements for repayment.

§ 1600.735–509 Source of deductions.

Except as provided in § 1600.735–513 and § 1600.735–514 of this subpart, deductions will be made only from basic pay, special pay, incentive pay, retired pay, retainer pay or in the case of an employee not entitled to basic pay, other authorized pay.

§ 1600.735–510 Duration of deductions.

Debts will be collected in one lump sum when possible. If the employee is financially unable to pay in one lump sum or the amount of debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, collection by offset will be made in installments. Such installment deductions will be made over a period not greater than the anticipated period of active duty or employment of the employee, as the case may be, except as provided in § 1600.735–513 and § 1600.735–514 of this subpart.

§ 1600.735–511 Limitation on amount of deductions.

The size and frequency of installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay. The amount deducted for any period, however, will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than $25 will be accepted only in the most unusual circumstances.

§ 1600.735–512 When deductions may begin.

(a) Deductions to liquidate an employee's debt should be scheduled to begin by the date and in the amount stated in the demand for payment.

(b) If the employee files a timely request for reconsideration or consideration of waiver, compromise or forgiveness, deductions will begin after a final decision is issued on the request.

(c) If the employee fails to submit a timely request for reconsideration or consideration of waiver, compromise, or forgiveness, or request for a hearing, deductions will commence in the next bi-weekly check vouchered for payment after the time limit to make such a request expires.

§ 1600.735–513 Liquidation of final check.

When the employee retires or resigns or if his or her employment or period of active duty ends before the debt is collected in full, the employee's debt will be automatically deducted from the final payments (e.g., final salary payment, lump-sum leave, etc.) due the employee to the extent necessary to liquidate the debt. If the employee's final pay is not sufficient to permit all deductions to be made, the order of precedence for the deductions will be: retirement and FICA; Medicare; Federal income taxes; health benefits; group life insurance; indebtedness due to the United States; state income taxes; and voluntary deductions and allotments.

§ 1600.735–514 Recovery from other payments due a separated employee.

When the debt cannot be liquidated by offset from any final payment due to the employee on the date of separation, the Director of FRMS will attempt to liquidate the debt by administrative offset as authorized under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States. (See 4 CFR 102.3)

§ 1600.735–515 Interest, penalties, and administrative costs.

When a delinquent debt is collected by salary offset, interest, penalties, and administrative costs on the debt will be assessed, unless waived by the Management Director, or his or her designee, in accordance with 4 CFR 102.13.

§ 1600.735–516 Non-waiver of rights by payments.

An employee's payment of all or any portion of a debt collected by salary offset will not be construed as a waiver of any right the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless

there are statutory or contractual provisions to the contrary.

§ 1600.735–517 Refunds.

Amounts paid, or deducted by salary offset, by an employee for a debt that is waived or otherwise not found owing to the United States will be promptly refunded to the employee. Refunds do not bear interest unless required or permitted by law or contract.

§ 1600.735–518 Salary offset requests by other agencies.

(a) *Statutory limitation.* Salary offset requests against Commission employees by other agencies may only be accepted within 10 years after the involved debt accrues. Whenever any request barred by this limitation is received in the Commission, the request shall be returned by FRMS to the requesting agency, with a copy of 4 CFR part 102, and this action shall be a complete response to the request.

(b) *Where salary requests should be filed.* Requests from other agencies for salary offset should be forwarded or addressed to:

Director, Financial and Resource Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., room 2001; Washington, DC 20507.

(c) *Form of request.* (1) Requests shall be considered only when presented with a completed and certified appropriate debt claim.

(2) The requesting agency must certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the requesting agency's regulations for salary offset have been approved by OPM.

(3) If the collection must be made in installments, the requesting agency must also advise FRMS of the number of installments and the commencing date of the first installment, if a date other than the next officially established pay period is required.

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the writing or statement is attached to the debt claim form, the requesting agency must also indicate to FRMS the action(s) taken by it under its offset regulations and give the date(s) the action(s) was/were taken.

(d) *Submitting the Request for Offset*—(1) *Current Commission employees.* The requesting agency must submit a completed and certified debt claim, agreement, or other instruction on the payment schedule to FRMS.

(2) *Separating or separated Commission employees*—(i) *Separating employees.* If the employee is in the process of separating, the requesting agency must submit its debt claim to FRMS for collection as provided in § 1600.735–513 of this subpart. FRMS must certify the total amount of its collection and notify the requesting agency and the employee as provided in paragraph (d)(2)(iii) of this section. If FRMS is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it will send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. The requesting agency, however, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(ii) *Separated employees.* If the employee is already separated and all payments due the employee from the Commission have been paid, FRMS will return the request and notify the requesting agency in writing of the employee's separation, that all payments due the employee from the Commission have been paid, and that any monies due and payable to the employee from the Civil Service Retirement and Disability Fund, or other similar funds, may be administratively offset to collect the debt.

(iii) *Transferred employees.* If, after the requesting agency has submitted the debt claim to FRMS, the employee transfers to another agency before the debt is collected in full, FRMS shall certify the total amount of the collection made on the debt. FRMS shall furnish one copy of the certification to the employee and another to the requesting agency along with a notice of the employee's transfer. FRMS shall also provide the employee's personnel office at the new agency with the original debt claim form from the requesting agency to insert in the employee's Official Personnel Folder along with a copy of the certification of the amount which has been collected. It shall be the responsibility of the requesting agency to review the debt upon receiving from FRMS a notice of the employee's transfer to make sure the collection is resumed by the employee's new agency.

(e) *Processing the debt claim upon receipt by FRMS*—(1) *Complete claim.* If FRMS receives a properly certified debt claim from another agency on a current or separating Commission employee, FRMS shall schedule the requested deductions to begin prospectively at the next officially established pay interval. Before the deductions are made, FRMS shall provide the employee a copy of the debt claim form along with notice of the amount of the deductions, and of the date deductions will commence if different from that stated in the deb claim.

(2) *Incomplete claim.* If FRMS receives an improperly completed debt claim from another agency, FRMS shall return the request with a notice that procedures under 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K must be followed and a properly certified debt claim received before action will be taken to collect the debt from the employee's pay.

(3) *Claims disputes.* The commission is not required or authorized to review the merits of the requesting agency's determination with respect to the amount or validity of the debt as stated in the debt claim.

§ 1600.735–519 Salary offset request by the Commission to another agency.

(a) *Statutory limitation.* Salary offset requests by the Commission to other agencies shall only be made within 10 years after the involved debt accrues, unless the right to collect the involved debt was unknown and could not reasonably have been known by the Commission employee responsible for the discovery and collection of the involved debt.

(b) *Who may make a request for salary offset to another agency.* Unless otherwise specifically provided, salary offset requests to other agencies to collect debts due to the Commission shall only be made by the Director of FRMS.

(c) *Form of request.* (1) FRMS shall make an offset request to another agency by presenting it with a completed and certified debt claim.

(2) FRMS shall certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the Commission's salary offset regulations have been approved by OPM and published in the **Federal Register.**

(3) Where the collection must be made in installments, FRMS shall advise the involved agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment.

(4) Where the involved employee does not agree or consent to the offset, FRMS shall advise the other agency of this in writing and also indicate the action(s) taken by the Commission under its

offset regulations and the date(s) the action(s) was/were taken.

(5) Where the employee agrees or consents to the offset, FRMS shall attach to the debt claim the employee's written agreement or consent.

(d) *Submitting the Request for Offset*—(1) *Current employees of other agencies.* FRMS shall submit a certified debt claim, agreement, or other instruction on the payment schedule to the employee's current employing agency.

(2) *Separating employees of other agencies.* If the employee is in the process of separating, FRMS shall submit a certified debt claim to the employee's employing agency for collection as provided in 5 CFR 550.1104(l).

[FR Doc. 91–14923 Filed 6–24–91 8:45 am]
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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 240

[DoD Instruction 1342.18]

Criteria and Procedures for Providing Assistance to Local Educational Agencies

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule implements the DoD Appropriations Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860). The rule is necessary to establish criteria for the Secretary of Defense to provide financial assistance to local educational agencies that are heavily impacted by the military presence. The FY 91 DoD Appropriations Act provides $10 million for this purpose.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez or Mr. John B. Shaver, telephone (703) 325–6162 or 325–8164.

SUPPLEMENTARY INFORMATION:

Background

On Tuesday, March 26, 1991, the Office of the Secretary of Defense published a proposed rule (32 CFR part 240) that implements the DoD Appropriations Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860). The rule establishes criteria for the Secretary of Defense to provide financial assistance to local educational agencies (LEAs) that are heavily impacted by the military presence. Today's final action does not differ from that proposed on March 26, 1991, except that the application period has been extended. Applications for financial assistance must be received no later than June 30, 1991.

Comments

Three comments were received from the public on the proposed rule.

1. *Comment:* Military sections 3(b) students should be included in calculating the payment under the proposed rule.

Reply: While payment is based on the average daily attendance (ADA) of military section 3(a) students only, the ADA of military section 3(b) students is considered in establishing basic eligibility.

2. *Comment:* The criteria for providing assistance in the proposed rule does not adequately address the true financial need of a LEA.

Reply: The funding formula addresses severity of need by comparing the LEA's average per-pupil expenditures (PPE) against the average PPE in the State. A preliminary review of data indicates that LEAs whose average PPE is less than the average PPE in the State can expect per-pupil payments that are approximately three times greater than LEAs whose average PPE is equal to or greater than the average PPE in the State.

3. *Comment:* The commentor stipulates that unique variables affect each LEA's average PPE and for this reason funds should be allocated to all eligible LEAs equally, regardless of the LEA's average PPE compared to the average PPE for the State.

Reply: While there may be unique variables that affect a LEA's average PPE, average PPE is a significant determinate of comparability. Moreover, this comparison provides for differentiated payments that addresses the need of the LEA.

List of Subjects in 32 CFR Part 240

Elementary and secondary education, Federally affected areas, Grant programs—education.

Accordingly, title 32, chapter I, subchapter M is amended to add part 240 to read as follows:

PART 240—CRITERIA AND PROCEDURES FOR PROVIDING ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

Sec.

Authority: Department of Defense Appropriations Act, 1991, Title II (Pub. L. 101–511, 104 Stat. 1860); 10 U.S.C. 113(d).

§ 240.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures under Title II of Pub. L. 101–511 for the Department of Defense to provide financial assistance to the LEAs that are heavily impacted by the military presence.

§ 240.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD).

(b) The schools operated by the LEAs providing free public education to dependent children of Armed Forces members or DoD civilian personnel who reside on Federal property.

§ 240.3 Definitions.

(a) *Applicant.* Any LEA whose ADA military section 3(a) and section 3(b) students equals at least 35 percent of its total ADA and that submits a letter of application to the Department of Defense; files an application for financial assistance; has received, or shall receive funds under section 3 of the Impact Aid Program; and submits documents and forms required by Section 240.4(c)(5) (i) through (iii) of this part.

(b) *Current expenditures.* Expenditures for free public education, including expenditures for administration, instruction, attendance and health services, public transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, debt service, or any expenditures made from funds under Public Law No. 89–10, title I. See the amended definition of "current expenditures" in Public Law No. 100–297 (1988).

(c) *DoD Contribution.* The amount of financial assistance an applicant shall receive under Public Law No. 101–511, title II.

(d) *Federal property.* Real property that because of Federal law, agreement, or policy is exempt from taxation by a State or political subdivision of a State and that the United States owns in fee simple or leases from another party.

(e) *Local Education Agency (LEA).* A public organization (usually a school

district) that has the authority to operate public schools within the limits of the applicable State law.

(f) *Military personnel.* A person who is an Armed Forces member serving on active duty.

(g) *Military 3(a) student.* A child who attends the school(s) of a LEA that provides free public education and who, while attending such school(s) of the LEA, resides on Federal property and has a parent who is on active duty in the Armed Forces (as defined in section 101 of 10 U.S.C.).

(h) *Military 3(b) student.* A child who attends the schools of a LEA that provides a free public education and who, while attending such school(s), has a parent who is on active duty in the Armed Forces (as defined in 10 U.S.C. 101) but does not reside on Federal property.

(i) *Parent.* The lawful father or mother of a person.

(j) *Per-Pupil Expenditure (PPE).* The average current expenditure for an individual student.

§ 240.4 Policy.

It is DoD policy that:

(a) During fiscal year (FY) 1991, the Department of Defense shall obligate 10 million dollars to assist the LEAs that meet criteria in paragraph (c) of this section. Of this 10 million dollars:

(1) Eight hundred and eighty-six thousand dollars shall be provided to the Killen, Texas, Independent School District.

(2) One hundred and sixty-seven thousand dollars shall be provided to the Copperas Cove, Texas, Independent School District.

(3) The remaining 8,947,000 dollars shall be used only to assist the eligible LEAs operating schools that provide free public education to dependent children of Armed Forces members of DoD civilian personnel who:

(i) While attending those schools, reside on Federal property.

(ii) Without such additional assistance, are unable to provide a level of education for such dependents equal to the comparable level of education provided in the State where such dependents reside.

(b) The OSD shall consult with the Office of the Secretary of Education before providing financial assistance to the LEAs.

(c) To be eligible for financial assistance:

(1) The LEA must be unable, without such additional assistance, to provide a level of education for such students equal to the comparable level of education provided in the State where such students reside (as determined by comparable student data).

(2) The LEA has in school year (SY) 1990–1991 an average daily attendance (ADA) of military section 3(a) or 3(b) students (see § 240.3 (g) and (h)) or a combination of military section 3(a) and 3(b) students that is not less than 35 percent of the LEA's total ADA. At least two students attending the LEA must be the dependents of Armed Forces members or of DoD civilian personnel. (For the purposes of this section, the Department of Defense shall rely on ADA data from the U.S. Department of Education (DoED)).

(3) For the prior and current FYs, the LEA has applied for and received, or shall receive, financial assistance from all regular Federal and State educational aid programs available to it, including the Impact Aid Program (Pub. L. No. 81–874, Section 3).

(4) The eligibility of the LEA under State law for State aid for free public education, and the amount of that aid, is no different than the eligibility and amounts received by the LEAs without military dependent students.

(5) The LEA files the following with the Assistant Secretary of Defense (Force Management and Personnel (ASD (FM&P)):

(i) A letter of application (see appendix A to this part).

(ii) One original and two copies of Table 8–3 and Table 9, which are published by the DoED, from the following forms:

(A) ED Form 4019 (Revised 8/90 Page 8), "Fiscal Report For Sections 2, 3(d)(2)(B), and 3(d)(3)(B)(ii) Payment Purposes."

(B) ED Form 4019 (Revised 8/90 Page 9), "Financial Burden and Effort Data."

(iii) A copy of an independently audited financial report of the applicant LEA for the second preceding FY.

(d) The eligible LEAs shall receive financial assistance only for those students who are dependent children of military personnel residing on Federal property while attending a school of the applicant LEA.

(e) Applications for financial assistance, under paragraphs (a)(1) through (a)(3)(iii) of this section must be received no later than June 30, 1991.

(f) The amount of assistance (the DoD contribution) for the eligible LEAs may not exceed the amount derived from the following formula:

(1) Of the 10 million dollars available:

(i) Eight hundred and eighty-six thousand dollars shall be provided to the Killeen, Texas, Independent School District.

(ii) One hundred and sixty-seven thousand dollars will be provided to the Copperas Cove, Texas, Independent School District.

(iii) Of the 8,947,000 dollars remaining:

(A) Amounts of 6,531,310 dollars shall be obligated to those eligible LEAs, whose per-pupil expenditure (PPE) for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(B) Amounts of 2,415,690 dollars shall be obligated to those eligible LEAs, whose PPE for the second preceding FY was equal to, or greater than, the average PPE in the State for the second preceding FY. (For the purposes of this section, the Department of Defense will rely on PPE data from the DoED.)

(2) For those eligible LEAs, whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1990–1991.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (6,531,310 dollars).

(iii) Divided by the sum of the ADAs for SY 1990–1991 of military section 3(a) students of those same eligible LEAs.

(3) For those eligible LEAs, whose average PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1990–1991.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was equal to, or greater than, the average PPE in the State for the second preceding FY (2,415,690 dollars).

(iii) Divided by the sum of the ADAs for SY 1990–1991 of military section 3(a) students of those same eligible LEAs.

(4) The sum of the ADAs for SY 1990–1991 for the military section 3(a) students in Killeen, Texas, Independent School District, and the Copperas, Texas, Independent School District, shall:

(i) Be deducted from the sum of the ADAs for SY 1990–1991 for the military section 3(a) students of all the eligible LEAs.

(ii) Not be used in calculating the DoD contribution.

(5) The LEAs that have been identified in Public Law No. 101–511, title II, shall receive the specified amount, but shall not be eligible for additional funding under paragraphs (f)(1)(i) through (iii) of this section.

(6) The ASD (FM&P) shall calculate the proposed contribution.

(g) The contribution may be used for all students in the LEA, at the discretion of the appropriate officials in the LEA.

§ 240.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force management and Personnel)* shall:

(1) Ensure the implementation of those policies and procedures.

(2) Provide assistance, as required, to the potentially eligible LEAs to meet the requirements in § 240.4(c)(5)(i) through (iii) of this part.

(b) The *General Counsel of the Department of Defense* shall provide legal advice for the implementation of this part.

§ 240.6 Procedures.

(a) An applicant requesting assistance under those criteria for FY 1991 in § 240.4(c) (1) through (4) of this part, shall submit the following:

(1) A letter of application (see sample in appendix A to this part).

(2) One original and two copies of Table 8–3 and Table 9, which are published by the DoED, from the following forms:

(i) ED Form 4019 (Revised 8/90 Page 8), "Fiscal Report For Sections 2, 3(d)(2)(B), and 3(d)(3)(B)(ii) Payment Purposes."

(ii) ED Form 4019 (Revised 8/90 Page 9), "Financial Burden and Effort Data."

(3) A copy of an independently audited financial report of the applicant LEA for the second preceding FY, requesting a contribution and ensuring the ADS(FM&P) that the LEA has applied for, has received, or shall receive all financial assistance from other sources for which it is qualified.

(4) The letter of application to the following address:

Assistant Secretary of Defense (Force Management and Personnel)
Washington, DC 20301–4000.

(b) The applicant shall file a copy of the letter of application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the address in § 240.6(a) of this part), by July 15, 1991. Such comments shall be considered, when applications are reviewed by the OSD.

(c) The application and all required supporting information must reach the ASD(FM&P) no later than June 30, 1991.

Appendix A to Part 240—Sample Letter of Application for Financial Assistance

Assistant Secretary of Defense (Force Management Personnel), Washington, DC 20301–4000

Dear Mr. Assistant Secretary:

Pursuant to title II of Public Law 101–511, "Department of Defense Appropriations Act," November 5, 1991, the (name of the local educational agencies (LEA)) requests financial assistance for the LEA for school year 1990–1991.

We certify that the LEA has applied for financial assistance from all sources, including the State of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military section 3(a) students only. Enclosed find an original, and two copies, of Tables 8–3 and 9 from the "Application For School Assistance in Federally Affected Areas," published by the U.S. Department of Education, and a copy of our independent audit "(title)" prepared by (name of firm or agency). We have submitted a complete and timely application for section 3 impact aid assistance to the Secretary of Education. A copy of this letter, with the above supporting information, is being submitted to the State educational agency.

Sincerely,
(Authorized LEA Official)

Dated: June 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15047 Filed 6–24–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Section 306 and Old-Law Pension Protection

AGENCY: Department of Veterans Affairs.

ACTION: Technical amendment.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on section 306 and old-law pension protection. The intended effect of the change is to correct cross-references in those regulations.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 1987 (52 FR 34906–10), VA published an amendment to 38 CFR 3.26 which dealt with section 306 and old-law pension annual income computations. That rulemaking, however, failed to amend the cross-reference to § 3.26 in 38 CFR 3.960 concerning section 306 and old-law pension protection. This oversight has now been corrected.

VA is amending the provisions of 38 CFR 3.960(b)(5) and (c) in order to correct the cross-references to 38 CFR 3.26. Because this amendment does not constitute a substantive change, publication as a proposal for public comment is unnecessary. For these reasons, this amendment is effective on June 25, 1991.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped Health care, Pensions, Veterans.

Approved: May 31, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3, subpart A is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

§ 3.960 [Amended]

2. In § 3.960(b)(5), remove the words "§ 3.26(b)" and add, in their place, the words "§ 3.26(c)".

3. In § 3.960(c), remove the words "§ 3.26(a) (1) or (2) or (b)(1)" and add, in their place, the words "§ 3.26(a), (b), or (c)".

[FR Doc. 91–15021 Filed 6–24–91; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–4

[FTR Amdt. 18]

RIN 3090–AD87

Federal Travel Regulation; Automobile Mileage Reimbursement

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the mileage reimbursement rate from 24 cents to 25 cents per mile for use of privately owned automobiles when authorized as advantageous to the Government. This FTR amendment reflects the results of the General Services Administration's (GSA's) report to Congress on the investigation of the cost of operating privately owned vehicles.

EFFECTIVE DATE: This final rule is effective June 30, 1991 and applies for travel performed on or after June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Thompson, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1264 or commercial (703) 557–1264.

SUPPLEMENTARY INFORMATION: The law (5 U.S.C. 5707(b)(2)) authorizes the Administrator of General Services to issue regulations prescribing, within statutory limits, mileage allowance rates. GSA is required by law to periodically investigate the cost of operating privately owned vehicles (motorcycles, automobiles, and airplanes) to employees while on official travel and report the results of the investigations to the Congress. GSA reported the results of the December 1989 investigation and indicated that the governing regulation would be revised to incerase the mileage allowance for use of privately owned automobiles from 24 cents to 25 cents per mile, the current statutory maximum allowance. The rates per mile now in effect for the use of motorcycles and airplanes, 20 cents and 45 cents, respectively, are at the statutory maximum levels.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301–4

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301–4 is amended as follows:

PART 301–4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301–4 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301–4.2 is amended by revising paragraphs (a)(2), (d)(1), and (d)(2) to read as follows:

§ 301–4.2 When use of a privately owned conveyance is advantageous to the Government.

(a) * * *

(2) For use of a privately owned automobile: 25 cents per mile.

* * * * *

(d) * * *

(1) *Round trip instead of taxicab to carrier terminals.* Instead of using a taxicab under § 301–2.3(c), payment on a mileage basis at the rate of 25 cents per mile and other allowable costs as set forth in § 301–4.1(c) shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either the employee's home or place of business to a terminal or from a terminal to either the employee's home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under § 301–2.3(c) for a one-way trip between the applicable points.

(2) *Round trip instead of taxicab between residence and office on day of travel.* Instead of using a taxicab under § 301–2.3(d) (in connection with official travel requiring at least one night's lodging), payment on a mileage basis at the rate of 25 cents per mile and other allowable costs as set forth in § 301–4.1(c) shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from the employee's residence to the employee's place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not exceed the taxicab fare, including tip, allowable under § 301–2.3(d) for a one-way trip between the points involved.

* * * * *

Dated: May 23, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–14990 Filed 6–24–91; 8:45 am]
BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 90–570 and 83–670; DA 91–686]

Broadcast and Cable Services; Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission, in its synopsis of the Report and Order in MM Docket Nos. 90–570 and 83–670 (FR Doc. No. 91–9736, 56 FR 19611, April 29, 1991) concerning children's television programming, inadvertently assigned erroneous section numbers to two new sections adopted in that decision. Those sections, 47 CFR 73.660 and 73.661 are now correctly designated as 47 CFR 73.670 and 73.671. Consequently, the reference to 47 CFR 73.660 found in the last sentence of § 73.3526(a)(8)(ii), also added in the Report and Order, is changed to 47 CFR 73.670.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Mass Media Bureau, Policy and Rules Division (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Erratum

In the Matter of Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log

Requirements for Commercial Television Stations

Released: June 14, 1991.

The Report and Order in this proceeding (6 FCC Rcd 2111, 1991) added two new rule sections to 47 CFR part 73, designated as §§ 73.660 and 73.661. These new sections should have been designated as 47 CFR 73.670 and 73.671 and are now corrected accordingly. Consequently, the reference to § 73.660 in the last sentence of 47 CFR 73.3526(a)(8)(ii), also added in the Report and Order, is changed to 47 CFR 73.670.

Further information on this revision may be obtained by contacting Rita McDonald, Mass Media Bureau, at (202) 632–5414.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91–14984 Filed 6–24–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Emergency Rule to List the Mitchell's Satyr as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Mitchell's satyr (*Neonympha mitchellii mitchellii*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Recent heavy collecting pressure on this butterfly has resulted in the loss of several populations, and collection is believed to imminently threaten the survival of several more populations. Due to the need to immediately decrease collection of the species by affording it the protection of the Act, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

A proposed rule to list the Mitchell's satyr as endangered will be published within 90 days. The proposed rule will provide for public comment and hearings (if requested).

EFFECTIVE DATE: This emergency determination is effective on June 25, 1991 and expires on February 20, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, Acting Chief, Division of Endangered Species, at the above address (telephone 612/725–3276 or FTS 725–3276).

SUPPLEMENTARY INFORMATION:

Background

N. m. mitchellii is the nominate subspecies of one of two North American species of *Neonympha*. It was described by French in 1889 from a series of ten specimens collected by J.N. Mitchell in Cass County, Michigan (French 1889). It is a member of the family Nymphalidae (over 6,400 species worldwide), subfamily Satyrinae (estimated 2,400 species).

(The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * * " (§ 4.(15)). Therefore, although taxonomically recognized as a subspecies, *N. m. mitchellii* will be referred to as a "species" throughout the remainder of this emergency rule.)

Mitchell's satyr is a medium sized (38–44 millimeter wingspan) butterfly with an overall rich brown coloration. A distinctive series of submarginal yellow-ringed black circular eyespots (ocelli) with silvery centers are found on the lower surfaces of both pairs of wings. The number of the eyespots on the forewing varies between the sexes. The eyespots are accented by two orange bands along the posterior wing edges, as well as two fainter orange bands across the central portion of each wing. It is distinguished from its North American congener *N. areolata* by the latter's well-marked ocelli on the upper wing surfaces, as well as the lighter coloration, and stronger flight of *N. areolata* (French 1889; McAlpine et al 1960; Wilsmann and Schweitzer 1991).

N. m. mitchellii is one of the most geographically restricted butterflies in North America. Historical records exist for approximately 30 locations in four States, ranging from southern Michigan and adjacent counties of northeastern Indiana into Ohio, with several disjunct populations in New Jersey. The species has been documented from a total of 17 counties (Badger 1958; Martin 1987; Pallister 1927; Rutkowski 1968; Shuey et al 1987b; Wilsmann and Schweitzer 1991).

A second *Neonympha mitchellii* subspecies was discovered at Ft. Bragg, North Carolina in 1983 (Parshall and Kral 1989). This subspecies, *N. m. francisci*, is believed to have been collected to extinction since that time. Although additional suitable habitat probably exists on, and adjacent to Ft. Bragg, no additional populations have been discovered (Schweitzer 1989). This emergency listing action does not include *N. m. francisci*.

Although the species has been reported from Maryland, the lack of suitable habitat makes it more likely those 1940's specimens were misidentified members of a *Neonympha areolatus* subspecies. Apparently suitable habitat exists in New York, Connecticut, Massachusetts, and Pennsylvania. However, searches in these States have failed to locate any *N. m. mitchellii* populations (Schweitzer 1989; Wilsmann and Schweitzer 1991).

The habitat occupied by the species consist solely of wetlands known as fens. This is an uncommon habitat type that is characterized by calcareous soils which are fed by carbonate-rich water from seeps and springs. Fens are frequently components of larger wetland complexes. Due to the superficial resemblance of fens and bogs, the habitat of Mitchell's satyr has sometimes been erroneously described in the early literature as acid bogs (McAlpine et al 1960; Shuey et al 1987a; Wilsmann and Schweitzer 1991).

From 1985 through 1990 intensive searches were made of over 100 sites having suitable habitat for the species throughout its range. The sites visited were either known historical locations for the species, or were chosen because of the presence of a fen. All historical locations were checked if they could be relocated and the fen habitat still existed. Survey results indicated the species still occurred at only 15 sites, two of which were not historically known. Therefore, the species has disappeared from approximately one-half of its historical locations. No extant populations have been found in Ohio, and the sole extant 1985 populations in New Jersey is believed to have been extirpated by collectors subsequent to the survey. Thus, the species is currently believed to exist only in nine counties in Indiana and Michigan. Due to the extent of these and other recent surveys it is unlikely that many additional sites will be found where Mitchell's satyr

continues to survive (Wilsmann and Schweitzer 1991).

A letter from Charles L. Remington, dated November 19, 1974, requested the Service work on protecting Mitchell's satyr (letter from Charles L. Remington to Dr. Paul A. Opler, U.S. Fish and Wildlife Service, dated November 19, 1974). That letter was treated as a petition to list the species as threatened or endangered. The Service subsequently found (49 FR 2485, January 20, 1984) that insufficient data was available to support listing at that time. The Service's May, 1984, Animal Notice of Review (49 FR 21664–21675) listed *Neonympha mitchellii* as a category 3C species, indicating the at that time species was believed to be too abundant for consideration for addition to the endangered and threatened species lists. In a subsequent January 6, 1989, Animal Notice of Review (54 FR 554–579) the species was upgraded to a category 2 candidate for listing, indicating renewed concern for the species' welfare, and encouraging further studies into the status of the species. The most recent status survey (Wilsmann and Schweitzer 1991) indicates that the species should be listed as endangered due to over-collection. The Service analyzed the status survey and determined that the species should be listed as endangered due to over-collection.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mitchell's satyr (*N. m. mitchellii*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Fen habitat is being destroyed and degraded by human activities and by natural succession. Human induced loss of historical sites has been documented in at least three cases. One Michigan site has been destroyed by urban development. Sites in Michigan and Ohio have been lost by conversion to agriculture. Another extant population in Michigan has had a portion of its habitat destroyed by hog farming activities and all terrain vehicle use. These activities constitute ongoing threats to other sites with extant populations of *N. m. mitchellii* (Shuey, et al 1987; Schweitzer 1989; Martin 1987; Wilsmann and Schweitzer 1991).

One Michigan site is bisected by a highway which is scheduled for realignment. Mitchell's satyr habitat is likely to be destroyed or degraded by the project. Discussions are underway to have the plans modified to diminish the adverse impact on the species.

Although natural succession in fens is incompletely understood, it appears that adjacent human activities can speed succession and subsequent loss of Mitchell's satyr habitat. For example, nearby drainage ditches may alter the hydrologic regime in the fen, resulting in lowered water levels, more xeric soil conditions, and increased invasion of brush and trees into the fen. There is evidence that this is occurring at one Michigan site (Wilsmann, Michigan Natural Features Inventory, 1990, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Mitchell's satyr has long been considered a prize by butterfly collectors, and there is evidence that collection of the species continues despite its endangered or threatened classifications under Michigan, Indiana, and New Jersey rare species laws. Subsequent to the 1985 survey of New Jersey fens it is believed that the State's last remaining *N. m. mitchellii* population was eliminated by collectors. A collector's glassine envelope was found at the site during one survey. Another New Jersey *N. m. mitchellii* site, well known to butterfly collectors, was extirpated in the 1970's by over-collection. The other subspecies of Mitchell's satyr, *Neonympha mitchellii francisci,* is believed to have been collected to extinction. (Wilsmann and Schweitzer 1991; Breden, New Jersey Natural Heritage Program, 1991, pers. comm.; Schweitzer, The Nature Conservancy, 1991, pers. comm.).

Well-worn human paths have been seen at the site of several extant populations in Michigan during recent surveys. These paths wind through *N. m. mitchellii* habitat in the manner that would be expected of knowledgeable collectors and are viewed as evidence that collections are continuing, despite the species being listed as endangered and protected by State statute. At least five Michigan sites are sufficiently well known to collectors and/or have sufficiently small Mitchell's satyr populations so as to be extremely vulnerable to local extinction from over-collection during a period of one to several days (Wilsmann, 1991, pers. comm.). All known *N. m. mitchellii* sites are believed vulnerable to local extinction by overcollection (Schweitzer, 1991, pers. comm.).

C. *Disease or predation.* Little is known about these factors, and there are no indications that they might be contributing to the decline of Mitchell's satyr.

D. *The inadequacy of existing regulatory mechanisms.* Mitchell's satyr is currently listed under State statutes as endangered in Indiana and New Jersey, threatened in Michigan, and extirpated in Ohio. The classification in Michigan has been proposed to be changed to endangered.

Either endangered or threatened status in Michigan prohibits the collection of the species without a Michigan scientific collection permit. However, the threat of State prosecution has not ended collectors' illegal activities. Michigan Department of Natural Resources officials believe the threat of Federal prosecution will be a more effective deterrent. (T. Weise, Michigan Department of Natural Resources, Endangered Species Program, 1991, pers. comm.; Wilsmann, 1991, pers. comm.).

The Indiana endangered classification provides official recognition of species rarity, but the State's endangered species regulations do not prohibit taking listed insects unless they are also on the Federal endangered and threatened species list. Thus, the classification provides no legal deterrent to continued collection. The ability to legally collect the species in Indiana renders those populations likely subjects for heavy collecting pressure and extirpation. (Bacone, Indiana Natural Features Inventory, 1991, pers. comm.).

New Jersey regulations provide total protection for any Mitchell's satyrs that may be rediscovered within the State. (Frier-Murza, New Jersey Endangered Species Program, 1991, pers. comm.). The Ohio classification of extirpated carries with it no legal protection. However, if the species is rediscovered in the State, an emergency order can be invoked to list it as endangered and grant full protection under State statutes (Case, Ohio Department of Natural Resources, Division of Wildlife, 1991, pers. comm.).

E. *Other natural or manmade factors affecting its continued existence.* Mitchell's satyr has only a single flight period annually, lasting perhaps a week for an individual, and for about three weeks for a population as a whole. It exhibits relatively sedentary behavior and slow, very low level flights. Due to these characteristics the species seems to have only limited ability to colonize

new habitat patches, to recolonize historical sites, or to provide significant gene flow among extant populations. Therefore, the isolation of small populations has great potential for local extinction if habitat degradation and/or collection pressure are also occurring (Wilsmann and Schweitzer 1991).

Reasons for Emergency Determination

In developing this rule the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list Mitchell's satyr as endangered on an emergency basis. The species has experienced a severe decrease in the number of extant populations over its historical range, as well as probable extirpation from two of the four States with historical populations. Due to its continuing appeal to a segment of butterfly collectors, as well as its well known and narrow habitat requirements, approximately one-third of the remaining populations are extremely vulnerable to over-collection and local extinction, and all populations are believed susceptible to collection-induced extirpation. The Service has concluded that conducting the normal listing process will delay protection of the species until after the 1991 Mitchell's satyr flight period, thus subjecting the species to an additional year of excessive collecting pressure. The resulting possible extirpations of one or more populations might severely reduce the probability of species survival. Therefore the Service is making this listing on an emergency basis to provide maximum protection to all known populations during the 1991 Mitchell's satyr flight period.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. At this time the Service has made a preliminary finding that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *N. m. mitchellii* is primarily threatened by collecting pressure. Publication of critical habitat descriptions and maps would make Mitchell's satyr more vulnerable to collection, and increase enforcement problems, and the likelihood of extinction. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Comments regarding the designation of critical habitat will be accepted and reviewed during the comment period established by the proposed rule which will be published within 90 days.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation of survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Badger, F.S. 1958. *Euptychia mitchellii* (Satyridae) in Michigan and Indiana tamarack bogs. Lepid. News 12:41–46.

French, G.H. 1889. A new species of *Neonympha*. Can. Ent. 21:25–27.

Martin, M.L. 1987. Mitchell's satyr (*Neonympha mitchellii*) in Indiana. Unpubl Rpt. to Michigan Natural Features Inventory: 6 pp.

McAlpine, W.S., S.P. Hubbell, and T.E. Pliske. 1960. The distribution, habits, and life history of *Euptychia mitchellii* (Satyridae). J. Lepid. Soc. 14(4):209–225.

Pallister, J.C. 1927. *Cissia mitchellii* (French) found in Ohio, with notes on its habits. Lepidoptera—Satyridae. Ohio J. Sci. 27:203–204.

Parshall, D.K. and T.W. Kral. 1989. A new subspecies If *Neonympha mitchellii* (French) (Satyridae) from North Carolina. J. Lepid. Soc. 43(2):114–119.

Rutkowski, F. 1966. Rediscovery of *Euptychia mitchellii* (Satyridae) in New Jersey. J. Lepid. Soc. 20(1):43–44.

Schweitzer, D.F. 1989. A review of category 2 insecta in USFWS Regions 3, 4, 5. Unpublished report for FWS Newton Corners Regional Office.

Shuey, J.A., J.V. Calhoun, and D.C. Iftner. 1987a. Butterflies that are endangered, threatened, and of special concern in Ohio. Ohio J. Sci. 87(4):98–106.

Shuey, J.A., E.H. Metzler, D.C. Iftner, J.V. Calhoun, J.W. Peacock, R.A. Watkins, J.D. Hooper, and W.F. Babcock. 1987b. Status and habitats of potentially endangered Lepidoptera in Ohio. J. Lepid. Soc. 41:1–12.

Author

The primary author for this emergency rule is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until February 20, 1992, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Insects" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects							
*	*	*	*	*	*	*	
Satyr, Mitchell's	Neonympha mitchellii mitchellii	U.S.A. (IN, MI, NJ, OH)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: June 19, 1991.

Bruce Blanchard,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 91–15024 Filed 6–20–91; 2:37pm]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Petroleum Refining Industry

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period.

SUMMARY: On May 3, 1991 (56 FR 20382), the Small Business Administration (SBA) published a proposed rule to simplify the size standard for petroleum refining. Under the proposed rule, if adopted as final, SBA would eliminate the 50,000 barrel per day (BPD) capacity limit as a component of the size standard for petroleum refining. The current requirement that a small petroleum refiner, including all affiliates, have no more than 1,500 employees would remain. The reduction of the standard to a single size criteria is consistent with the single-size criteria used for all other industries. This notice extends the period to submit comments on the proposed rule.

DATES: Written comments on the proposed rule must be received on or before July 3, 1991.

ADDRESSES: Written comments should be submitted to Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, NW., 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Economist, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: In 1955, SBA first established the size standard for the Petroleum Refining Industry, Standard Industrial Classification (SIC) code 2911, at 1,000 employees with refining capacity not to exceed 30,000 barrels per day (BPD). At that time, small refiners produced 7.8 percent of the refining industry's output. By 1975, however, the small refiners' share of output had declined to 5.1 percent. To restore the small business share of output, both components of the size standard were raised, to 1,500 employees and 50,000 BPD. SBA's analysis of industry factors and trends now indicates a further adjustment of the size standard is warranted to maintain the small business share of output. The proposed rule and a discussion of the industry analysis supporting an adjustment of the size standard appear at 56 FR 20382.

This notice will extend the comment period in order to allow the public sufficient time to fully address the appropriateness of the proposed rule and its impact on the industry and on small refiners. Given the level of interest that has been expressed, the longer comment period will afford an opportunity for the proposed rule to reach a broader cross-section of the target audience than otherwise possible, an may generate valuable input from small refiners potentially affected by a size standard change.

Therefore the comment period on the proposed rule is hereby extended. The Agency will accept comments on the proposed rule until July 3, 1991.

Dated: May 31, 1991.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 91–15025 Filed 6–24–91; 8:45 am]

BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule: Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Denial of petition by State of Texas for statewide exemption from trade regulation rule concerning funeral industry practices.

SUMMARY: On December 7, 1988, the State of Texas filed its second petition for exemption from the FTC Funeral Rule. A request for public comment on the petition was published in the **Federal Register** on May 22, 1989, and the 90-day comment period ended on August 21, 1989. After careful consideration of the petition and its attachments, public comments on the petition, FTC enforcement actions in Texas, and other information made available to the Commission and placed on the public record, the Commission has determined that: (1) The state law does not afford an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the FTC Funeral Rule; and (2) the Commission cannot conclude that Texas law enforcement is sufficient to warrant the grant of an exemption at this time. Accordingly, the petition is denied.

DATES: This action is effective June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION:

I. The Funeral Rule

On September 24, 1982, the Federal Trade Commission ("FTC" or "Commission") promulgated the Trade Regulation Rule concerning Funeral Industry Practices ("Funeral Rule" or "Rule").[1] The Rule, which became fully effective on April 30, 1984, requires funeral providers to: (1) Provide consumers with a written, itemized general price list, casket price list and outer burial container price list; (2) make truthful representations regarding legal and other requirements concerning funeral arrangements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before performing embalming; (5) refrain from misrepresenting the preservative and protective value of funeral goods and services; and (6) provide price information over the telephone.

II. The Exemption Process

Section 453.9 of the Funeral Rule permits states to apply for exemption from the rule. It provides:

> If, upon application to the Commission by an appropriate state agency, the Commission determines that:
>
> (a) There is a state requirement in effect which applies to any transaction to which this rule applies; and
>
> (b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the

[1] 47 FR 42260 (September 24, 1982), 16 CFR part 453.

Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.

In its Statement of Basis and Purpose for the Funeral Rule, the Commission stated that exemption requests would be considered on a case-by-case basis, and that exemption proceedings would be conducted pursuant to § 1.16 and subpart C, §§ 1.21–1.26 of the Commission's rules of practice.[2]

III. Commission Denial of Prior Texas Exemption Petition

The first Texas exemption petition was filed by the Texas State Board of Morticians on February 21, 1984, prior to the effective date of the Funeral Rule, and was supplemented by six additional filings that concluded on March 4, 1985.[3] Comments were received from 11 parties, including: The Consumer Protection Division of the Office of the Attorney General of Texas; Mr. T. Grady Baskin, Jr., a former member of the Texas State Board of Morticians; five memorial societies; Consumers Union; the Gray Panthers of Austin; and two individual consumers.[4] All of the commenting parties urged that the Commission deny the Texas petition.

The petition was denied because the Commission concluded that Texas law failed to provide an overall level of protection to consumers as great as that provided by the Funeral Rule. To illustrate its conclusion, the Commission cited the following three areas in which Texas law afforded consumers less protection than the Funeral Rule: [5]

A. Definition of "Prospective Customer"

Under Texas law, prospective customers were entitled to receive itemized written price information and disclosures. The term "prospective customer" was defined as "a consumer who enters a funeral establishment and inquires about the price of any funeral service or merchandise." Thus, consumers who entered a funeral establishment and inquired about funeral arrangements, but did not ask specifically about prices, might not be entitled to price disclosures as they would under the Funeral Rule. In addition, the definition, though including individual consumers, failed to include other entities that clearly are covered by the Funeral Rule, such as memorial associations.

B. Lack of Definition of "Services of Funeral Director and Staff"

Texas law did not define or limit the "services of funeral director and staff" that might be included in a non-declinable professional services fee. The Funeral Rule does define this term and makes clear that such a mandatory fee may not include other goods and services required to be separately itemized on the price list. The Commission concluded that Texas law, by this omission, did not prevent all tying arrangements that are prohibited under the Funeral Rule and that, as a result, consumers could be denied choice in the selection of funeral goods and services.

C. Timing of Providing Price Lists to Consumers

Texas law did not mandate the timing of the provision of required price lists and the itemized statement of goods and services selected to consumers. Thus, under Texas law consumers might not be provided with price disclosures early in the discussion of funeral arrangements as required by the Funeral Rule. Moreover, consumers might not receive the itemized statement, showing the cost of each item selected as well as the total cost of the funeral, at the conclusion of the arrangements discussion as mandated by the Funeral Rule.

The Commission stated that these aspects of Texas law differed from the Funeral Rule in important respects and that, taken together, they illustrated its conclusion that Texas law provided consumers less protection than the Funeral Rule. The Commission noted that several commenting parties had alleged inadequate enforcement of the state law. However, it determined that it need not address this issue since it had already decided to deny the petition. The Commission noted that before an exemption petition could be granted, however, it would have to find the state administered and enforced its law effectively.

IV. Second Texas Exemption Petition

On December 7, 1988, the State of Texas filed its second petition for exemption from the Funeral Rule.[6] The petition stated, in Exhibit E, that since the denial of its first exemption petition, "Texas has taken positive steps to correct any shortcomings in the state law and regulations." The petition cited the following changes:

A. Texas mortuary law has been changed to define "prospective customer" as "any consumer who enters a funeral establishment and inquires about any funeral service, cremation, or merchandise." Moreover, the law states that price information must be provided "regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise." [7]

B. The regulations of the Texas Funeral Service Commission (which has replaced the Texas State Board of Morticians) have been amended to define the term "other itemized services provided by the funeral home staff," which appears in the retail price list requirement in the Texas statute,[8] in a manner similar to the definition of "services of funeral director and staff" contained in the Funeral Rule, § 453.1(o).[9] Unlike the Funeral Rule, the Texas regulation adds the phrase "and any other services offered by the funeral establishment," after the list of suggested items that may be included in this fee. However, the Texas definition also provides that this fee should not include other items required to be separately itemized on the price lists.[10] In addition, the Texas rules contain an anti-tying provision that is virtually identical to § 453.4(b) of the Funeral Rule.[11]

C. The Texas Funeral Service Commission (hereafter "TFSC") has adopted a regulation requiring the presentation of the retail price list (which includes the general price list, casket price list, and outer burial container price list) "to any consumer who inquires in person about any funeral service, cremation or merchandise and prior to the consumer viewing or selecting any merchandise or service." The itemized statement of

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[2] 47 FR at 42287. In addition, the FTC staff published exemption guidelines to assist states desiring to petition for an exemption from the Funeral Rule. 50 FR 12521 (March 29, 1985).

[3] The first Texas exemption petition and supplemental filings were placed on the public record as Document Nos. XXIII–2–7 and 13, FTC File No. 215–46. (Unless otherwise noted, all citations to the public record are from FTC File No. 215–46.)

[4] The comments were placed on the public record as Document Nos. XXIV–24–29 and 31–37.

[5] 51 FR 43746, 43747–78 (December 4, 1986).

[6] The petition was placed on the public record as Document No. XXIII–15.

[7] Vernon's Texas Civil Statutes (hereafter VTCS), Article 4582b, section 1.V.

[8] VTCS, Article 4582b, section I.S.

[9] 16 CFR 453.1(o) defines these services as follows: "The 'services of funeral director and staff' are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices."

[10] 22 Texas Administrative Code (hereafter TAC) 203.17. The regulations of the Texas Funeral Service Commission have been promulgated pursuant to VTCS, Article 4582b, section 5.

[11] 22 TAC 203.11(h).

goods and services selected (called a "written memorandum" in Texas law) must be presented to the customer upon the conclusion of the arrangements discussion.[12]

The TFSC asserted, in Exhibit E of its petition, that as a result of these changes, which went into effect September 1, 1987, "Texas law now provides an overall level of protection to consumers as great as or greater than the Funeral Rule," and "that the only criterion that remains to be addressed is whether the state law is being administered and enforced effectively."

Other amendments to the Texas mortuary law were enacted by the legislature after the filing of the second Texas exemption petition and became effective September 1, 1989. These amendments were sent to the FTC staff by the TFSC, with a letter dated June 26, 1989, requesting that the exemption petition be amended accordingly.[13]

A request for public comment on the second Texas petition for exemption from the Funeral Rule was published in the **Federal Register** on May 22, 1989.[14] The notice described: (1) The Commission's basis for denial of the first Texas exemption petition; (2) the changes in Texas law since the denial;[15] (3) the remaining differences between Texas law and the Funeral Rule; and (4) the administration and enforcement of Texas law. Questions for public comment were posed with respect to items (2)–(4). The 99 day period for public comment ended on August 21, 1989.

V. Public Comments Concerning Texas Law

Comments on the second Texas exemption petition were filed by 14 parties.[16] The following seven parties supported the TFSC request for exemption from the Funeral Rule: Brown Claybar of Claybar Funeral Home and Legislative Chairman for the Texas Funeral Directors Association; Greg Kuehler and Ray Lunn of Lunn's Colonial Funeral Home; John W. Coker, Executive Director of the Texas Funeral Directors Association; Robert Lopez, Jr., of Allison Funeral Service; Scherry A. Allison of Allison Funeral Service; Dudley M. and Trema Hughes of the Dudley M. Hughes Funeral Company; and John M. Kreidler of McAllen, Texas. The exemption request was opposed by the following seven individuals and organizations: Marvin A. Wilson of Houston, Texas (formerly employed in the funeral services industry); Antonia and Toby Robles of Dallas, Texas (consumers); American Association of Retired Persons (AARP) Texas State Legislative Committee; National Consumers League; Consumers Union, Southwest Regional Office; Texas Gray Panthers; and T. Grady Baskin, Jr. (former member of the Texas State Board of Morticians).

The commenters who supported granting Texas an exemption from the Funeral Rule made the following arguments: Texas law and regulations offer consumers protection that is equal to or greater than that provided by the FTC rule; the FTC rule is a duplication of regulatory effort that is confusing and unnecessary; consumers can resolve problems more quickly through the state agency than through the federal government; Texas funeral directors prefer state regulation over federal regulation; the TFSC is effectively enforcing state law; and the states are best equipped to regulate professions within their borders.

The commenters who opposed the exemption petition asserted that an exemption for the state of Texas from the Funeral Rule would result in less protection for Texas consumers. The consumer organizations and Mr. Baskin argued that the changes in Texas law since the FTC's denial of the first exemption petition were inadequate to correct the deficiencies found by the Commission. Most of the commenters also contended that enforcement of state law by the TFSC is inadequate. In addition, the consumer organizations suggested that it would be premature for the FTC to grant the Texas petition given its own ongoing mandatory review of the Funeral Rule[17] and the fact that the Texas Sunset Advisory Commission was conducting an evaluation of the TFSC and its enabling statute and regulations.

Some of the commenters also addressed the specific questions concerning Texas law and its enforcement that were posed in the **Federal Register** notice of May 22, 1989.

A. Recent Changes in Texas Law and Regulations

1. Definition of "Prospective Customer"

The AARP, Consumers Union, and the National Consumers League commented on this change in Texas law. All of these organizations believe that the statute remains ambiguous on the issue of whether representatives of consumer groups or memorial societies, who are compiling information solely for comparative purposes, would be entitled to receive the retail price list. All three believe that the FTC's use of the word "person"[18] affords greater consumer protection by making clear that price information must be provided to anyone who inquires about prices or arrangements.

2. Definition of "Services of Funeral Director and Staff"

Consumers Union was the only party to comment on this amendment. It noted that the administrative regulation is described as a clarification of "other itemized services provided by the funeral establishment staff," which is listed under the statutory requirements for the retail price list.[19] Consumers Union objected to the fact that the TFSC regulation uses the term "other services" to define the statutory term "other * * * services." It stated: "The rule does nothing to clarify the statute—it in effect says that 'other services' are 'other services.'"[20]

3. Timing of Providing Price Lists to Consumers

The TFSC has adopted a regulation requiring that a price list be presented "prior to the consumer viewing or selecting any merchandise or service."[21] The AARP, Consumers Union, National Consumers League, and Mr. Baskin all concluded that the FTC Rule provides greater clarity and greater protection to consumers by requiring

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[12] 22 TAC 203.18.

[13] The letter and accompanying documents have been placed on the public record as Document No. XXIII–21. Among other things, the amendments: (1) Give the TFSC authority to act with regard to instances of misappropriation of funds paid for pre-need funeral arrangements; (2) authorize the TFSC to issue a reprimand for violation of relevant laws and regulations; and (3) add to the list of punishable statutory offenses the failure to provide general price information by telephone within a reasonable time.

[14] 54 FR 21972 (May 22, 1989).

[15] The most recent amendments to the Texas law, noted above, were enacted subsequent to publication of the May 22 **Federal Register** notice and hence were not mentioned therein. However, these documents were placed on the public record early in July 1989 and were noted by at least one of the commenting parties.

[16] These comments have been placed on the public record as Document Nos. XXIV–40–54.

[17] The Funeral Rule provides for a mandatory review proceeding to begin no later than four years after its effective date. 16 CFR 453.10. This proceeding commenced with a Notice of Proposed Rulemaking published in the **Federal Register** on May 31, 1988. 53 FR 19864. The proceeding has not yet been concluded.

[18] "Person" is defined as "any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity." 16 CFR 453.1(n).

[19] VTCS, Article 4582b, section 1 S.

[20] Document No. XXIV–50, p.3.

[21] 22 TAC 203.18.

that a general price list be offered at the beginning of the arrangements discussion.[22] They believe that the Texas regulation is more ambiguous, appearing to allow the funeral provider to present the retail price list at any point prior to the actual selection of goods or services.

The comments of the AARP cited testimony by James P. Hunter III, Chairman of the TFSC, at Funeral Rule review hearings held in San Francisco in January 1989. Mr. Hunter expressed disagreement with the FTC requirement that a price list be offered at the beginning of the arrangements discussion. He further stated that the TFSC took the position that as long as the document was presented prior to the actual selection of goods, the public interest would be safeguarded.[23]

B. Remaining Differences Between the FTC Rule and Texas Law

Other differences between the Funeral Rule and Texas law were noted in the request for public comment on the first Texas exemption petition.[24] However, the Commission did not address these other differences in its denial of the first exemption petition. The Commission merely stated that the three items discussed therein "illustrate its conclusion that state law provides less protection than the Funeral Rule" [25] Therefore, the May 22, 1989, **Federal Register** notice requested public comment on whether remaining differences between the Funeral Rule and Texas law are significant and would afford Texas consumers less protection than they now enjoy if the exemption petition were granted. Some of the commenters addressed some of these remaining differences.

1. Transactions Covered by FTC Rule and Texas Law

The Funeral Rule covers all funeral providers, defined in § 453.1(j) as "any person, partnership, or corporation that sells or offers to sell funeral goods and funeral services to the public." Thus, the provisions of the Rule would extend to pre-need sellers who may not be licensed funeral directors.[26] The jurisdiction of the TFSC, however, is limited to licensed funeral establishments, licensed funeral directors, and licensed embalmers.[27]

[22] 16 CFR 453.2(b)(4)(i).

[23] FTC File No. 215–66, Tr. Vol. III, pp. 581–82.

[24] 50 FR 46271 (November 6, 1985).

[25] 51 FR at 43747.

[26] However, the Rule would not cover such sellers if they were engaged in the "business of insurance." 16 CFR 453.8(c).

[27] VTCS, Article 458b, section 1.A, B, and G; section 3.H.

Comments filed by the Consumer Protection Division of the Texas Attorney General's Office with regard to the first Texas exemption petition made clear that the State Board of Morticians (now the TFCS) could not enforce state law against an unlicensed funeral provider.[28]

Both Consumers Union and Mr. Baskin state that there are sellers of pre-need funeral goods and services in Texas who would be covered by the FTC Federal Rule, but who are not subject to the jurisdiction of the TFSC.[29] The TFSC regulations, in fact, specifically exclude pre-need sellers from the requirement that only licensed funeral directors enter into contractual agreements for funeral services and merchandise.[30] Thus, it appears that there are sellers of funeral goods and services in Texas who are subject to the provisions of the FTC Funeral Rule, but who are not subject to the Texas laws and regulations that are the basis for this exemption petition.[31]

In addition, there appears to be a question as to the authority of the TFSC over pre-need transactions that are handled by licensed funeral directors and establishments. The TFFS asserts that the price information and disclosure requirements of Texas law apply to pre-need transactions and are enforceable by that agency.[32] However, the staff of the Texas Sunset Advisory Commission reached the conclusion that these disclosure requirements have not been applied to pre-need sales and that the TFSC lacks clear authority to enforce these regulations in pre-need transactions.[33]

2. Required Price Itemization

The Funeral Rule requires that consumers be provided with a general price list, showing prices for 17 specified items of service or merchandise, a casket price list, and an outer burial container price list.[34] Texas law requires a retail price list which includes the prices of caskets and outer burial containers, and various other charges for services, facilities, and automotive equipment.[35] The essential differences between the federal and state requirements are that Texas does not require any descriptive information about the caskets or outer containers listed on the price list and does not require itemized prices for other preparation of the body, other use of facilities, and other automotive equipment.[36] Consumers Union and the National Consumers League both commented on these differences as evidence that Texas law affords consumers lees protection by providing them with less information that the FTC Rule.

3. Required Disclosures

(a) *selection of goods and services.* The FTC Funeral Rule has required disclosures for both the general price list and the itemized statement concerning the customer's right to choose and pay for only the items desired. Texas requires a dual set of disclosures for each document. The disclosures required by the TFSC rules track the language required by the FTC.[37] However, the Texas statute requires somewhat different wording, with a somewhat different meaning.[38] The

[28] Document No. XXIV–34.

[29] Document No. XXIV–50, pp.4–5, and No. XXIV–54, pp.2–3.

[30] 22 TAC 203.15(d).

[31] All sellers of pre-arranged or pre-paid funeral services or merchandise in Texas (whether or not they are licensed funeral directors) are required to have a permit issued by the Texas Department of Banking and to use a contract form approved by that Department. (VTCS Article 548b, sections 1 and 2.) Neither the pre-need statute nor regulations promulgated by the Department of Banking contain price itemization or disclosure requirements comparable to those of the FTC Funeral Rule.

[32] Document No. XXIII–21, letter dated June 26, 1989, from Larry A. Farrow, Executive Director, TFSC.

[33] Texas Funeral Service Commission, a Staff Report to the Sunset Advisory Commission, December 1989, Document No. XXIV–58, p.54. This report is discussed in detail in section VI.D, *infra*.

[34] 16 CFB 453.2(b)(2), (3) and (4).

[35] VTCS, Article 458b, section 1.S, 3.h.22; 22 TAC 203.9, 203.17, and 203.18.

[36] The Texas statute does list a category of "other itemized services provided by the funeral establishment staff." However, the Texas regulations have defined this item as a professional services fee which, under both the Funeral Rule and Texas law, may be made a non-declinable item. Thus, it cannot be considered a catch-all category for other miscellaneous items of service, facilities or automotive equipment. VTCS, Article 458b, section 1.S; 22 TAC 203.17; compare with 16 CFR 453.1(o) and 453.2(b)(4)(iii)(C).

[37] The following is required on the general price list: The goods and services shown below are those we can provide to our customers. You may choose only the items your desire. if legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected. 16 CFR 453.4(b)(2)(i)(A); 22 TAC 203.11(h)(2)(A)(i).

The following is required on the itemized statement: Charge are only for those items that are used. If we are required by law to sue any items, we will explain the reasons in writing below. 16 CFR 453.4(b)(2)(i)(B); 22 TAC 203.11(h)(2)(A)(ii).

[38] On the general price list, the Texas statute requires the following: You may choose only the items you desire. If you are charged for items you did not specifically request, we will explain the reason for the charges on the written memorandum. VTCS, Article 4582b, section 1.S.

The following is required on the itemized statement or written memorandum: Charges are made only for items that are used. If the type of funeral selected requires extra items, we will

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TFSC states that both sets of disclosures are required on both documents.[39]—

Both Mr. Baskin and Consumers Union commented on these disclosures concerning the customer's right of choice.[40] Mr. Baskin states that the dual sets of disclosures "are confusing and seem to imply different standards." He and Consumers Union both note that the FTC disclosures allow the funeral provider to charge for items not selected only in very limited circumstances, such as to satisfy a legal requirement. They believe that the language required by the Texas statute, by contrast, implies broader discretion for the funeral provider to charge for items not selected even where the charge may not result from a legal requirement imposed by the cemetery or crematory.

(b) *Cash advance items.* The FTC Funeral Rule requires that the following disclosure appear in immediate conjunction with the itemized price information:

> This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected.[41]

Texas law requires the following notice on the retail price list: "Please note that there may be charges for items such as cemetery fees, flowers, and newspaper notices." [42]

(c) *Mandatory professional services fee.* The Funeral Rule requires the following disclosure, if the fee for services of funeral director and staff is non-declinable:

> This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.) [43]

Texas law has no comparable disclosure. Consumers Union commented that both the cash advance and professional services fee disclosures are intended "to forewarn the consumer of the possibility of final charges which might not have been contemplated, or which could be used to pad increases in the final billing." It concluded that Texas law provides less warning to consumers.[44]

(d) *Embalming.* The Funeral Rule and the Texas regulations require virtually identical disclosures regarding embalming to appear on the general price list.[45] However, the Funeral Rule also requires the following disclosure to appear on the funeral services contract.

> If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.[46]

Texas law does not require any disclosure concerning embalming to appear on the itemized statement or contract, and does not require written explanation of the reasons for embalming. Mr. Baskin commented that he believed these written disclosures should be required in Texas because "(e)mbalming is the foundation of the expensive funeral." [47]

4. Prior Approval for Embalming

Like the Funeral Rule, Texas law requires prior approval for embalming, or a reasonable effort to obtain such approval.[48] However, the Funeral Rule also provides that the customer need not pay for embalming performed without prior authorization if the customer selects funeral arrangements where the procedure is not needed. Texas has no comparable provision that would enable the customer to decline payment under such circumstances.

Mr. Baskin was the only party to comment on this difference, asserting that the TFSC should adopt the same provision "in light of the importance the embalming process plays in the total cost of the funeral." [49]

5. Telephone Price Disclosure

The TFSC regulation contain a telephone price disclosure requirement that is nearly identical to that of the Funeral Rule.[50] Both require an affirmative disclosure that price information is available over the telephone, as well as the actual conveying of such information upon request. An amendment to the Texas statute, adopted subsequent to the filing of the second exemption petition, authorizes the TFSC to bring an enforcement action against any licensee for failure to "provide general price information by telephone within a reasonable time." [51] Consumers Union pointed out that the TFSC regulation and later statutory amendment must be read together to determine the required timing for provision of telephone price information.

C. Provisions of Texas Law Not Included in the FTC Rule

The Texas exemption petition lists several state requirements that have no counterpart in the Funeral Rule. Most of these were also part of Texas law when the previous petition was filed. The Commission concluded that although these features of Texas law offered "tangible benefits to consumers," on balance they did "not compensate for the essential protections contained in the Funeral Rule that are absent from state law." [52]

These additional features of Texas law are as follows:

1. Each written memorandum (or itemized statement) must include the name, mailing address, and telephone number of the TFSC and a statement indicating that complaints may be directed to the TFSC.[53]

2. Funeral establishments must display their least expensive casket in the same general manner as other caskets are displayed. In addition, they must display five or more adult caskets in order to permit reasonable selection.[54]

3. Funeral directors may not state or imply that a customer's concern with the cost of any funeral service or merchandise is improper or indicates a lack of respect for the deceased.[55]

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explain the reasons for the extra items in writing on this memorandum. VTCS, Article 4582B, section 1.T.

[39] Document No. XXIII–17, letter dated January 25, 1989, from Larry A. Farrow, Executive Director, TFSC.

[40] Document No. XXIV–54, p.4, and No. XXIV–50, p.6.

[41] 16 CFR 453.2(b)(4)(i)(D).

[42] VTCS, Article 4582b, section 1.S. Both the Texas regulation and the Funeral Rule require the following statement, at the end of the cash advance disclosure, if the funeral provider adds a charge to cash advance items: "We charge you for our services in buying these items." 16 CFR 453.3(f)(2); 22 TAC 203.11(f)(2).

[43] 16 CFR 453.2(b)(4)(iii)(C).

[44] Document No. XXIV–50, p.6.

[45] 16 CFR 453.3(a)(2)(ii); 22 TAC 203.11(a)(2)(B).

[46] 16 CFR 453.5(b). This disclosure must appear on the "contract, final bill, or other written evidence of the agreement or obligation given to the customer." Most funeral providers place the disclosure on the itemized statement, which also serves as the funeral services contract.

[47] Document No. XXIV–54, p.4.

[48] 16 CFR 453.5(a); VTCS, Article 4582b, section 3.H.11; 22 TAC 203.19 and 203.21(b)(1).

[49] Document No. XXIV–54, p.4.

[50] Compare 16 CFR 453.2(b)(1) with 22 TAC 203.8.

[51] VTCS, Article 4582b, section 3.H.22(D). Document No. XXIII–21(b).

[52] 51 FR at 43748.

[53] VTCS, Article 4582b, section 1.T.

[54] VTCS, Article 4582b, section 4.C.5. A statutory requirement that funeral directors disclose to customers the different colors in which their three least expensive caskets are available, and arrange to provide the customer with a casket in the requested color, was repealed by the Texas legislature after the May 22, 1989, **Federal Register** notice was published. Document No. XXIII–21 (a) and (b).

[55] VTCS Article 4582b, section 3.H.21.

4. Funeral directors may not take custody of a body without authorization or refuse to promptly release a body to a person authorized to make funeral arrangements.[56]

5. Casket display rooms must be designed and utilized to allow the pubic to make a private inspection and selection.[57]

6. Any person making funeral arrangements must explain to the customer or prospective customer that a contractual agreement for funeral services of merchandise may not be entered into before the presentation of the retail price list to that person.[58]

7. The TFSC is required to prepare and disseminate to the general public information explaining matters relating to funerals, describing the regulatory functions of the Commission, and describing the Commission's procedure for handling consumer complaints.[59] The TFSC has published such a brochure, attached to the exemption petition as Exhibit K,[60] and Texas funeral establishments are required to have three brochures prominently displayed.[61]

8. Funeral establishments must retain records, including price lists and the written memoranda, for a minimum of two years.[62]

The AARP contended that although these measures were "examples of fair business practices which should be emulated and encouraged," they were not adequate substitutes for specific requirements of the FTC Funeral Rule.[63] On the other hand, the Texas Funeral Directors Association, and others who commented on behalf of the industry, pointed to some of these provisions of law as evidence that Texas affords greater protection to consumers than the FTC Funeral Rule.[64]

[56] VTCS, Article 4582b, section 3.H.11.

[57] 22 TAC 203.10.

[58] VTCS, Article 458b, section 3.H.22.

[59] VTCS, Article 4582b, section 6E; 22 TAC 201.9(a).

[60] This brochure explains what must be done when a death occurs, the available methods of disposition, embalming and the fact that embalming is not required by Texas law, organ donation, ways of selecting a funeral director, how one may obtain information regarding funeral costs, state law with respect to advertising and solicitation by funeral directors, pre-need funeral contracts, and complaint procedures. It makes no mention of the FTC Funeral Rule.

[61] 22 TAC 201.9(c).

[62] VTCS, Article 4582b, section 3.H.25; 22 TAC 203.20 and 203.21(b)(2). The FTC record keeping requirement is only one year. 16 CFR 453.6.

[63] Document No. XXIV–48, p.11.

[64] Document Nos. XXIV–42 and 44.

VI. Administration and Enforcement of Law in Texas

A. The Texas Funeral Service Commission

The TFSC is composed of nine commissioners appointed by the Governor and confirmed by the Senate. The term of office is six years. Five of the nine commissioners must be licensed funeral directors and/or embalmers and must have five consecutive years of experience immediately preceding their appointment. The remaining four members of the commission represent the public interest and may not be subject to the regulatory authority of the commission. [65]

1. Staffing

The commission employs a full-time staff of eight, including an executive director, a deputy director/chief investigator, a director of licensing and administration, a staff attorney, two field inspectors, an administrative technician/secretary, and an administrative clerk. In addition, the commission contracts with outside legal counsel, a financial consultant, and a licensed private investigator who investigates a minimum of two consumer complaints each month.[66]

2. Funding

The commission is funded by the Texas legislature through general appropriations. Funding for the commission for the past three years has been as follows: FY 1987, $222,871; FY 1988, $321,565; and FY 1989, $321,004. The additional funding for FY 1988 and 1989 was requested for increased law enforcement positions and activities.[67]

3. Enforcement Procedures

The commission both initiates and receives complaints against licensees. The commission is required to inspect each licensed funeral establishment once each year.[68] According to the petition, establishments revealing serious deficiencies are usually reinspected within 30–90 days. Formal charges are filed against repeat offenders and the commission normally will assess an administrative penalty of $250 or more against the license of the establishment or the license of the funeral director in charge.[69]

[65] VTCS, Article 4582b, section 2.A.

[66] Exhibit G of the Texas exemption petition. See also, letter dated June 26, 1989 from Larry A. Farrow, Executive Director of the TFSC, Document No. XXIII–20.

[67] *Id.*

[68] VTCS, Article 4582b, section 4.G.

[69] Exhibit G of the Texas exemption petition.

According to the petition, all complaints are personally reviewed by the executive director. Those which allege a violation of the statute or rules are assigned either to the chief investigator or the contract investigator. Complaints are investigated through a combination of telephone inquiries; travel by the investigator to the location of the complaint; interviews with the complainant, funeral home employees, and other witnesses; and investigation of funeral home files.[70]

When an investigation has been completed, it is brought to the Complaint Review Committee, comprised of the commission chairman, the executive director, the outside legal counsel, and the chief investigator. This committee reviews the case and makes one of the following recommendations: (1) Request further investigation; (2) close the case for insufficient evidence; (3) recommend that an agreed order be negotiated; (4) recommend that an administrative penalty be assessed; or (5) recommend that formal charges be filed and a formal hearing scheduled. The commission may accept or reject any of these recommendations. Final action on complaints must be taken in an open meeting.[71]

The TFSC has authority to cancel, revoke, suspend, place on probation and/or assess an administrative penalty against any licensee subject to its regulatory authority.[72] Administrative penalties may be in an amount not less than $100 or more than $5,000 for each violation of the statute or regulations promulgated pursuant to the statute.[73] The TFSC is further authorized to sue a funeral director or funeral establishment for appropriate injunctive relief.[74]

B. Enforcement History in Texas

In September 1984, after the filing of the first Texas exemption petition, the Commission received from Mr. Grady Baskin, Jr., then a consumer member of the State Board of Morticians, the results of an investigation in which he had personally surveyed funeral homes in the Dallas and Houston areas to check for compliance with state law price disclosure requirements.[75] The

[70] Exhibit G of the Texas exemption petition; January 25, 1989 letter from Larry A. Farrow, Document No. XXIII–17.

[71] Exhibit G of the Texas exemption petition.

[72] VTCS, Article 4582b, sections 3.H, 4.D.2(c), 6 and 6G.

[73] VTCS, Article 4582b, sections 6G(b).

[74] VTCS, Article 4582b, section 7.

[75] This document was placed on the public record as Document No. XXIII–10. Mr. Baskin's comments.

Continued

survey had been conducted between June and August 1984, and was undertaken with the approval of the Texas Attorney General's office. Posing as a consumer who anticipated the need to make funeral arrangements for a family member in the near future, Mr. Baskin visited 24 funeral homes to request retail price lists and other price information. He was able to discuss funeral arrangements at 18 of these funeral homes. Only one funeral home was found by Mr. Baskin to be in full compliance with state law. No enforcement actions or investigations were brought by the State Board as a result of the Baskin survey.[76]

The FTC's Dallas Regional Office has brought six enforcement actions resulting from independent investigations of some of the funeral homes surveyed by Mr. Baskin. Five of these cases have resulted in consent agreements with civil penalties ranging from $10,000 to $30,000.[77] In the one litigated matter, the U.S. District Court for the Northern District of Texas, Dallas Division, granted the FTC's motion for summary judgment, awarding a permanent injunction and a civil penalty of $80,000.[78]

At the time the first Texas exemption petition was denied, the Texas State Board of Morticians did not have authority to assess civil penalties for violation of its regulations. However, the newly constituted Texas Funeral Service Commission was given this authority in September 1987.[79] This new authority is reflected in the enforcement summary appended to the exemption petition.

Exhibit H of the exemption petition is a statistical summary, for fiscal years 1986–88, of funeral establishment inspections, complaints received or initiated by the TFSC, and actions taken by the TFSC. Exhibit I summarizes the complaints received or initiated by the TFSC during fiscal years 1987 and 1988.

There were 60 complaint summaries for fiscal year 1987. Eighteen of the 60 appeared to involve allegations of conduct that would also constitute violations of the FTC Funeral Rule.[80] Three of these matters resulted in formal hearings, and in one case (the subject of two complaints) the license was revoked. The other two hearings resulted in dismissal.[81] One case was closed after an informal hearing.[82] One case was resolved by agency arbitration, and another by an agreed order with the funeral home imposing license suspension with probation. Two cases were closed with a warning letter to the funeral home. Five were closed because of insufficient evidence, witness refusal to testify, or lack of substantiation for the complaints.[83] One case was closed because the establishment was no longer in business. In the remaining cases, the allegations were disproved by the investigation.

There were 161 complaint summaries for 1988, the first full year in which the TFSC had civil penalty authority. Of these complaints, 21 contained allegations that appeared to involve violations of the Funeral Rule as well as of Texas law. Three of the complaints were the result of TFSC inspections; the remainder were consumer complaints. Seventeen of these case files were provided to FTC staff upon request.[84] Fines were assessed in eight cases (four for $250, three for $500, and one for $10,000); in addition there were agreed orders in four instances. Six matters were closed because of insufficient evidence of lack of substantiation, and in one instance the complaint was withdrawn by the complainant. In one case there was an agreed order and a 6-month license suspension with probation. In the last case, a formal hearing resulted in a license suspension. However, the case had been appealed to state district court, which had remanded the matter to the TFSC to dismiss or prepare revised findings of fact and conclusions of law. The court's remand letter stated that it was impossible to determine the basis for the agency's action, and concluded that the requirements of the Texas Administrative Procedures Act had not been met.[85]

In addition to TFSC enforcement, it appears that the Texas Attorney General's Office has authority to enforce the requirements of the FTC Funeral Rule as a state law action under section 17.46(c)(1) of the Texas Deceptive Trade Practices Act. At least three such actions have been filed by the Attorney Generals' Office.[86] In its comments on the first Texas petition, the Consumer Protection Division of the Texas Attorney General's Office stated that granting the exemption would raise an issue as to whether the Attorney General's Office could continue to enforce Funeral Rule requirements under state law.[87]

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opposing the first Texas exemption petition, are on the public record as Document Nos. XXIV–35, 36, and 37. The Texas price disclosure requirements that were the subject of this compliance check had gone into effect September 1, 1983. Of course, the FTC Funeral Rule, effective April 30, 1984, was also in force at the time of Mr. Baskin's investigation.

[76] Document No. XXIV–35. See also, letter of January 25, 1989, from Larry A. Farrow, Executive Director, TFSC, Document No. XXIII–17.

Mr. Baskin stated that he was informed by the Attorney General's office that as a Board member, he could not testify in any Board proceeding. Document No. XXIV–35. However, there appears to be no reason why the Board could not have conducted an independent investigation of the funeral homes visited by Mr. Baskin.

[77] *U.S.* v. *Troy Suggs Funeral Home*, No. CA3–87–1258–C (N.D. Tex. May 20, 1987) (civil penalty of $20,000); *FTC* v. *Crane Rhoton Services Corporation*, No. CA3–87–1545–T (N.D. Tex. June 13, 1988) (civil penalty of $30,000); *U.S.* v. *Ware Crest, Inc., No. CA4–88–437–K* (N.D. Tex. July 11, 1988) (civil penalty of $10,000); *U.S.* v. *Funeral Corporation Texas*, No. CA4–8929 E (N.D. Tex. January 11, 1989) (civil penalty of $20,000); and *FTC* v. *Niday Funeral Home, Inc.*, No. H–88–2808 (S.D. Tex. November 1, 1989) (civil penalty of $25,000).

[78] *FTC* v. *Dudley M. Hughes Funeral Co.*, 710 F. Supp. 1524 (N.D. Tex. 1989), *appeal dismissed*, 891 F.2d 589 (5th Cir. 1990). The TFSC also brought an action against the Dudley M. Hughes Funeral Company based upon a consumer complaint alleging that Hughes had caused the embalming of a deceased person against the wishes of the family. The Hughes funeral establishment license was suspended for two years, with the two year period fully "probated". Mr. Hughes' personal license was suspend for one year, with only the last six months "probated." (A licensee is able to continue working, under probation, for the "probated" period of time.) Administrative penalties totalling $10,000 were also imposed. Document No. XXIV–59. Subsequently, Mr. Hughes was found to be in violation of probation; his personal license was revoked and the establishment license suspended without probation. Both orders were stayed pending appeal. Mr. Hughes has since filed for bankruptcy.

[79] VTCS Article 4582b, sections 3.H, 4.D.2(c), and 6G.

[80] Sixteen of these case files were requested by FTC staff and have been placed on the public record. Document No. XXIII–17.

[81] Reasons for the dismissal were not given.

[82] Again, no reason for the action was given. In this case the funeral home admitted that it did not have or use a written general price list. The closing letter stated that the firm would be re-inspected within 60 days and that a financial penalty would be recommended if compliance with the law was not found at that time. Document No. XXIII–17, case number 87–51.

[83] In one of these cases, which involved a pre-need contract, there is a letter to the State Board of Morticians from the Texas Department of Banking which states "it appears that violations of both mortuary law and Federal Trade Commission rules have occurred" Document No. XXIII–17, case no. 87–27.

[84] These case files have been placed on the public record as Document Nos. XXIII–17 and 21(d).

[85] Document No. XXIII–21(d), case number 88–78.

[86] One action was filed in state court against a funeral director who was, at that time, a Commissioner of the TFSC. The Attorney General's Office requested and received FTC staff assistance in reviewing evidence in this case. (Document No. XXVIII-304.) The Texas court entered a directed verdict for the defendant, and the Attorney General's office did not appeal. *State of Texas* v. *Henry Thomae*, No. 86–133–C (197th Dist. Ct., Cameron County, Tex., Aug. 17, 1987.) Two actions were settled by consent agreements. *State of Texas* v. *Goldie Wilson, d/b/a Wilsons' Funeral Directors*, No. 400,074 (299th Dist. Ct., Travis County, Tex., July 3, 1986) (permanent injunction; $6,000 civil penalty and costs); *State of Texas* v. *Santos De Leon, d/b/a De Leon Funeral Home*, No. C–170–86–B (93rd Dist. Ct., Hidalgo County, Tex., May 13, 1987) (permanent injunction; $3,000 costs).

[87] The Chief of the Consumer Protection Division of the Attorney General's Office opposed the first

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C. Public Comments on Enforcement of Texas Law

The AARP, Consumers Union, the Gray Panthers, and Mr. Baskin all commented upon this issue, asserting that enforcement of state law by the TFSC is inadequate. The AARP noted that the majority of administrative penalties assessed by the TFSC were levied for failure to disclose to customers the different colors in which the three least expensive caskets are available, failure to include the name, address and telephone number of the TFSC on the sales contract, and/or failure to display five or more adult caskets.[88] Consumers Union also believes that enforcement efforts have been concentrated too heavily on these technical violations.[89]

The AARP, Consumers Union, and the Gray Panthers contended that the enforcement record has been poor with regard to consumer generated complaints. Both AARP and Consumers Union noted that a majority of consumer initiated complaints in 1988 were dismissed with no action because of insufficient evidence, unsubstantiated charges, or similar reasons. They further noted that in many cases involving license suspension or revocation, and some cases involving a monetary penalty, all or most of the penalty was probated.[90]

Mr. Baskin, former member of the Texas State Board of Morticians, characterized administration and enforcement in Texas as "dismal." He referred to his own prior survey of Texas funeral homes, commenting that the FTC should not have had to conduct independent investigations and enforcement actions against funeral homes surveyed by a Texas board member.[91] Mr. Baskin acknowledged that State enforcement efforts have improved in recent years. However, he does not believe that they have improved sufficiently that Texas should be granted an exemption from the FTC Funeral Rule.

Among those who favor granting the exemption petition, two representatives of the Texas Funeral Directors Association stated that the TFSC and its staff "have a proven record of inspections, investigations and positive enforcement actions, when necessary." They further asserted that the consumer who registers a complaint "can get quicker resolution of any problem dealing with a smaller specialized state agency than with the Federal Trade Commission."[92] The other industry representatives who commented in favor of the exemption petition also asserted that state regulation is effective and preferable to federal regulation. Some also believe that having dual regulation by state and federal government creates confusion in the industry.[93]

D. Staff Report to the Texas Sunset Advisory Commission

The TFSC and its enabling legislation are subject to sunset as of September 1, 1991.[94] Therefore, the TFSC recently underwent review by the Texas Sunset Advisory Commission was published in December 1989.[95] The Sunset Advisory Commission staff recommended to the Sunset Advisory Commission that the TFSC statute be repealed and the agency abolished, based upon its conclusion that state licensure for funeral directing and embalming is no longer necessary or justified to protect the public health and safety. However, the Staff Report recommended that the consumer protection portions of the TFSC statute be retained and enforced through the courts, and that TFSC regulations patterned after the FTC Funeral Rule be incorporated into state law. (Presumably enforcement would be handled by the Attorney General's Office.)

The Staff Report noted that 47 percent of agency-initiated complaints in 1988 were "exclusively for the minor violation of failure to post information on each casket in the display room and/or failure to include the agency's address on forms used by the funeral establishment." Since the former requirement was rescinded by statute in 1989, the Staff Report concluded that the volume of agency-initiated complaints will be greatly reduced in the future, unless the TFSC changes its current approach to identifying violations. With regard to TFSC handling of consumer complaints, the Staff Report stated that the actions taken by the board to resolve the complaints it receives are "minimal and ineffective." It noted that only a small number of cases resulted in any enforcement action, and that fines were imposed in only a few cases. In other cases, probation was the only sanction.[96] In this connection, the Staff Report criticized the TFSC for failure to monitor licensees placed on probation to determine if the conditions of probation have been met.[97] With regard to TFSC funeral home inspections, the Staff Report noted numerous errors in inspection reports and a failure to make timely re-inspection of establishments cited for severe violations or multiple discrepancies.[98]

The Staff Report also cited the existence of the FTC Funeral Rule as a reason for abolishing the state agency. With regard to FTC enforcement actions against several Texas funeral homes, the Report stated: "This level of enforcement appears to serve as a significant deterrent against deceptive practices."[99]

As an alternative to abolishment of the TFSC, the Staff Report recommended transfer of its functions to the Texas Department of Health, where a centralized licensing structure is already in place for other professions. Other recommendations set forth in the Staff Report could be implemented whether the TFSC was continued in its present form or its functions transferred to another agency. The proposals most relevant to this petition included: Changing the composition of the board so that the majority of its members are public members; a requirement that the government designate the chair of the

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Texas exemption petition for that reason, among others. He stated that "by granting the requested exemption, the FTC might deprive Texas consumers of significant local enforcement resources." (Document No. XXIV–34). He further stated that the Attorney General's Office could not enforce their state mortuary laws unless the laws were amended. The Texas Attorney General's Office did not submit comments on the second exemption petition. The only input of the Texas Attorney General's Office into this proceeding is found in Exhibit A of the exemption petition, wherein the Attorney General sets forth the TFSC's statutory authority as required by the exemption guidelines. (50 FR at 12525.) This letter, addressed to the Executive Director of the TFSC, states that the TFSC has the authority to enforce the state mortuary law, VTCS, Article 4582b, and to promulgate and enforce regulations pursuant to that statute. It further states that the requirements of these statutes are equal to or greater than federal requirements.

[88] Document No. XXIV–48, pp. 12–13. Of the 161 complaint summaries listed for 1988 in Exhibit I to the exemption petition, 95 involved one or more of these violations. Fifty-two color card violations were listed, and administrative penalties were assessed in most of those cases. However, this provision of the Texas statute subsequently was repealed in 1989. See footnote 54, above.

[89] Document No. XXIV–50, pp. 6–7.

[90] Document No. XXIV–48, pp. 13–14, and Document No. XXIV–50, pp. 6–7. AARP stated that it verified with the TFSC that probating a license suspension means that the licensee is able to continue working, under probation, for the "probated" period of time.

[91] Document No. XXIV–54, pp. 5–6.

[92] Document Nos. XXIV–42 and 44.

[93] Document Nos. XXIV–43, 45, 46, 47 and 52.

[94] VTCS, Article 4582b, section 2.N.

[95] *Texas Funeral Service Commission*, a Staff Report to the Sunset Advisory Commission, December 1989. This report has been placed on the public record as Document No. XXIV–58.

[96] Document No. XXIV–58, p. 17.

[97] *ID.* at 73–74.

[98] *ID.* at 66.

[99] *ID.* at 18.

commission; statutory amendment to clarify that the TFSC has authority to take action against licensees for failure to make required disclosures in pre-need transactions; statutory amendment to require that the disclosures and information currently required to be given to consumers in at-need funeral transactions also be provided in all pre-need sales; replacement of annual funeral establishment inspection with biennial inspection and a requirement that rules be developed for reinspection of violators; development of a system for tracking violations uncovered during inspection, sending warning letters to violators and requiring that violators document corrective action within a certain time; and a requirement that the commission monitor licensees placed on probation during the probationary period.

On February 19 and 20, 1990, the Texas Sunset Advisory Commission met to vote on the recommendations contained in the Staff Report on the TFSC. The Sunset Advisory Commission did not adopt the recommendation that the TFSC be abolished or the recommendation that the functions of the agency be transferred to the Texas Department of Health. However, the Sunset Commission did adopt all of the Staff Report's alternative recommendations.[100] The Sunset Commission staff has incorporated these decisions into draft legislation to be offered at the 1991 session of the Texas legislature.

VII. Conclusions

A. Level of Protection

Texas has made a number of improvements to its laws and regulations since the denial of the last petition. These improvements make it a closer question whether Texas law provides the same overall protection as the Funeral Rule. However, there remain a number of areas where Texas law either fails to address transactions covered by the Rule or provides significantly less protection.[101] For this reason, as well as the enforcement concerns discussed below, the Commission concludes that the petition must be denied.

The threshold test for a state exemption petition is that there is a state requirement in effect which applies to any transaction to which the Federal Rule applies. That requirement has been met. There is a state requirement in effect in Texas which applies to some (although not all) transactions to which the Funeral Rule applies.[102] However, the petitioner must also demonstrate that its requirements afford "an overall level of protection to consumers which is *as great as, or greater than*, the protection afforded by (the FTC) Rule" (emphasis added).

The primary focus of the FTC Funeral Rule is the early disclosure of information to consumers. This includes information concerning the availability and prices of various funeral goods and services, and the presence or absence of legal or other requirements that might affect the consumer's selection of such goods and services. Other provisions of the Rule are designed to maximize consumer choice with regard to funeral arrangements by preventing funeral providers from bundling goods and services and otherwise requiring unnecessary purchases. A petition should be granted where state law provides its consumers the same (or greater) quantity and quality of information and choice as the FTC regulation, provided the state can demonstrate effective administration and enforcement of its laws.

Since the denial of the first Texas exemption petition, Texas has taken some steps to change those three aspects of its law that the Commission had discussed to illustrate its previous conclusion that state law provided less protection than the Funeral Rule. In two of those areas, the definition of "prospective customer" and the charge for services for funeral director and staff, Texas has made its laws and regulations more closely parallel to the requirements of the FTC Funeral Rule. Some of the commenting parties believe that the Texas requirements are still ambiguous and thus fail to offer protection comparable to that of the Funeral Rule. While the language of these amendments in fact may be less clear than comparable provisions of the Funeral Rule, the changes appear to meet the basic concerns expressed by the Commission in its denial of the first Texas petition.

With regard to the timing of presentation of the general price list, however, it is clear that the FTC requirement is more stringent than the Texas requirement. Under the Funeral Rule, the information must be presented at the beginning of the arrangements discussion. Under Texas regulations, the funeral provider need only offer the information at the conclusion of this discussion where the consumer is ready to select services and merchandise. This difference in timing can be critical.

The very premise of the Funeral Rule is that consumers are in an unequal bargaining position with the funeral provider. Consumers are generally unfamiliar with this transaction, and often must make their decisions under significant time pressure and emotional stress. The goods and services purchased also can be costly. It is for these reasons that the Commission concluded that the price lists and their disclosures should "be present for consultation while the consumers were considering what to purchase." [103] The general price list provides information concerning the range of options available in funeral services, legal requirements (or the absence thereof) that may affect consumer choice, and prices. This information obviously is not helpful to the consumer at the outset of the arrangements conference, when the consumer may have little idea of the options available, legal requirements, or the financial consequences of the choices to be made.[104]

Under the Texas requirement, this information need not be made available during the discussion and might be offered at the conclusion of the conference, where final decisions are about to be made and a contractual agreement completed. The testimony of the TFSC Chairman at the Funeral Rule review hearings suggests that the language differences between the two regulations are more than semantic, instead reflecting a fundamental policy difference between the TFSC and the FTC. The TFSC disagrees with the FTC requirement that the price list should be offered at the beginning of the arrangements discussion and wishes to place greater discretion with the funeral provider to determine when it should be introduced. Given the importance the Commission attaches to the provision of price information and disclosures early in the arrangements conference, it

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[100] *Sunset Advisory Commission Decisions on: Texas Funeral Service Commission*, February 19 & 20, 1990, Document No. XXIV–61.

[101] There is no issue of conflict between state law and the FTC Rule. A funeral provider in compliance with the Funeral Rule would also be in compliance with the relevant provisions of state law, provided that the additional disclosures set forth in footnote 38 are added to the price list and itemized statement

[102] As discussed above, the jurisdiction of the TFSC is limited to licensed funeral establishments, licensed funeral directors, and licensed embalmers. VTCS, Article 4582b, Section 1.A, B and G and section 3.H; 22 TAC 203.15(d). Thus, its regulations do not extend to other types of pre-need sellers of funeral goods and services that would be subject to the FTC Funeral Rule. 16 CFR 453.1(j).

[103] 47 FR at 42272.

[104] In comments opposing the first Texas exemption petition, the Chief of the Consumer Protection Division of the Texas Attorney General's Office asserted that the beneficial effect of the required disclosures might be lost if the information were not provided during the arrangements discussion. Document No. XXIV–34.

cannot conclude that Texas affords protection as great as that afforded by the Rule when it permits essential information to be provided in a less timely manner.

There remain other differences between the Funeral Rule and Texas requirements that have not been addressed or changed since the denial of the first exemption petition. One relates to the growing area of pre-need sales of funeral goods and services. Pre-need sellers who are not licensed funeral providers are covered by the FTC Funeral Rule but would not be subject to the jurisdiction of the TFSC.[105] These sellers are regulated by the Department of Banking, which does not impose requirements similar to those of the Funeral Rule. In addition, the Texas Sunset Advisory Commission has raised doubts about the legal authority of the TFSC to enforce price disclosure requirements even with respect to pre-need sales by licensed funeral directors.[106]

In addition, important disclosures concerning the charge for embalming and the mandatory professional services fee are missing from Texas requirements. The FTC Rule requires a disclosure on the itemized statement, contract, or final bill concerning the charge for embalming. This disclosure alerts the consumer that in some situations, if the embalming was performed without prior approval, he or she may decline to pay for it. Texas law lacks any comparable disclosure. In addition, Texas does not require a written explanation of the reason for embalming where a charge has been imposed. While the Texas disclosure regarding embalming that appears on the general price list informs consumers that the procedure generally is not legally required and that they may select funeral arrangements where it is not needed, it does not inform them that approval is needed before the procedure is performed. Nor does it state that they may be able to decline payment if approval was not obtained. The FTC has given consumers a right, as well as information about that right, that they are not given under Texas law. In this instance, the Commission cannot conclude that Texas law affords protection as great as that provided under the Funeral Rule.

Also missing from Texas law is the disclosure that must appear in conjunction with the non-declinable professional services fee on the general price list. This disclosure alerts the consumer that this fee is the one item on the general price list that is fixed, regardless of other selections. In addition, it informs the consumer that such a fee has already been included in the package services of direct cremation, immediate burial, and forwarding or receiving remains, and will not be added to the package price if one of these services is selected. The only information Texas would require concerning the non-declinable professional services fee is the sentence: "However, any funeral arrangements you select will include a charge for our services." [107] This sentence alone does not inform the consumer which fee on the price list is required or how this fee is handled if one of the package services is selected. Moreover, in Texas the ambiguity may be compounded by the fact that the non-declinable services fee is not specifically identified as such, but is contained under a somewhat amorphous category of "other itemized services provided by the funeral home staff." [108] The Commission considers it important that a general price list make a clear distinction between the items that are declinable and the fee that will be assessed in every transaction. Texas provides consumers with less information in this regard.

The above differences between state law and the Funeral Rule mean that under Texas law consumers would receive less information and less timely information than they are now provided under the Rule. The Commission recognizes there are additional provisions of Texas law that have no counterpart in the Funeral Rule and must be considered in determining whether Texas law provides the same "overall protection" as the Rule. However, these provisions, though offering tangible benefits to consumers, are tangential to the Rule's basic objectives or were rejected by the Commission in favor of a more effective remedial approach.[109] By contrast, the deficiencies in state law discussed above go to the heart of the Rule. Given these remaining differences, the Commission cannot conclude that Texas consumers would be provided with protection as great as they now enjoy, if the petition for exemption were granted.[110]

B. Administration and Enforcement of Texas Law

Section 453.9 of the Funeral Rule specifies that an exemption petition meeting the comparable-law test may be granted only "for as long as the state administers and enforces effectively the state requirement." In denying the first Texas petition, the Commission noted that there were criticisms of state enforcement, but it declined to reach that issue. The Commission acknowledged that it would have to make a finding of effective administration and enforcement of state law before an exemption petition could be granted.[111]

Since the denial of the first petition, Texas has made some commendable improvements in its enforcement efforts. For example, the TFSC's statutory authority to assess administrative penalties came into effect on September 1, 1987.[112] Nevertheless, it appears that

[105] This difference in coverage of the two bodies of law was one of the reasons cited by the Chief of the Consumer Protection Division of the Texas Attorney General's Office in his comments opposing the first Texas petition.

[106] The Commission recognizes that the pre-need issue, absent other deficiencies in state law, could be addressed by granting a partial exemption that would leave the FTC Rule in force as to pre-need sellers. However, the Commission's determination with regard to state enforcement, and other deficiencies in Texas law, precludes the partial-exemption approach.

Moreover, the Commission notes that during the mandatory rulemaking review proceeding (described in note 17, *supra*), the issue of whether the Funeral Rule should continue to cover pre-need arrangements has been addressed. (Final Staff Report to the Federal Trade Commission, June 1990, pp. 223–28.) Several of the Commission's Funeral Rule enforcement actions to date (including all of the Texas cases cited in notes 77 and 78, *supra*) have included evidence of violations that occurred during pre-need arrangements. However, if the Commission, at some future time, were to decide that the Rule's requirements should not extend to pre-need transactions, this area of difference between state law and the FTC regulation would cease to exist.

[107] Under both Texas regulations (22 TAC 203.11(h)(2)(A)(i)) and the FTC Rule (16 CFR 453.4(b)(2)(i)(A)) this sentence must be inserted into the general price list introductory disclosure which alerts consumers to their right to select only the items they desire.

[108] See section IV.B. *supra*. It is not clear how this aspect of the Texas regulation would be implemented in the absence of the FTC Rule. However, if this "other" services category were permitted to include both declinable and non-declinable items, the need for a disclosure specifically identifying the non-declinable fee would become even more important.

[109] Some of these additional provisions of Texas law were considered and rejected by the Commission when it adopted the Funeral Rule. An example is the requirement in Texas law that funeral providers display their least expensive caskets in the same general manner as other caskets are displayed. The Commission concluded that "reliance on rule provisions designed to stimulate information disclosure is the most effective way to ensure that consumers have a *bona fide* opportunity to purchase low-cost caskets and other merchandise if they so desire." 47 FR at 42290.

[110] The other remaining differences between the state law and the FTC Rule, such as the fact that Texas requires less itemization on its general price list and requires no descriptive information on the casket and outer burial container price lists, would not, in themselves, necessarily warrant denial of an exemption petition.

[111] 51 FR at 43747.

[112] Document No. XXIII–18, letter dated February 27, 1989, from Larry A. Farrow, Executive Director.

Continued

significant compliance problems remain. The present petition comes at the very time that the Texas Sunset Advisory Commission has recommended substantial changes to the current Texas enforcement scheme, based upon a staff report characterizing state enforcement as "minimal and ineffective." For this reason, and because there is insufficient evidence to the contrary, the Commission cannot conclude at this time that state enforcement is sufficient to warrant granting an exemption from the Funeral Rule.

In December 1989, the staff of the Texas Sunset Advisory Commission, the state agency responsible for evaluating the laws and regulations enforced by the TFSC and the TFSC's performance, issued a report that was highly critical of TFSC enforcemnet. The Sunset Advisory Commission Staff Report stated that TFSC enforcement efforts have been too heavily concentrated on minor and technical violations. It noted that in 1988, 47 percent of agency-initiated complaints involved only one or both of two minor violations. One of those requirements was subsequently repealed by statute and the report concluded that the volume of agency-initiated complaints would be greatly reduced in the future unless the TFSC changed its approach to identifying law violations. Agency efforts to resolve consumer complaints were characterized as "minimal and ineffective." In addition, the report criticized the TFSC for failure to track and monitor identified violators of its regulations. It recommended that the majority of TFSC commissioners be appointed from the general public rather than the funeral industry and made other recommendations to improve consumer protection in the funeral services area. In February 1990, the Sunset Commission, though not supporting staff's recommendations that the agency be abolished and its functions transferred to the Department of Health, adopted the staff's other recommendations for improving the TFSC's consumer protection enforcement.

The conclusions of the Sunset Advisory Commission Staff Report are not outweighed by any substantial evidence to the contrary. It is difficult to assess the effectiveness of any agency's enforcement record based on the number of inspections, complaints, and formal and informal proceedings. States, like the FTC, have limited resources and cannot be expected to demonstrate perfect industry compliance with its laws as a precondition of being granted an exemption. States also should be free to employ different means to achieve the same enforcement objectives.[113] At the same time, however there is reason to require clear evidence on the enforcement question, and to maintain a dual federal-state enforcement scheme where it appears that consumers would have less protection under state enforcement alone.

The FTC has brought six Funeral Rule enforcement actions in the state of Texas between 1987 and 1989 and has obtained total civil penalties of $185,000. In these six cases, the FTC alleged substantial Funeral Rule violations regarding significant Rule provisions. Investigation of Texas funeral homes for noncompliance with the Funeral Rule continues at the present time by the FTC's Dallas Regional Office. In light of the evidence indicating that Texas state enforcement may not be providing a level of protection equivalent to that of the FTC, particularly with regard to certain significant Funeral Rule provisions, the Commission is reluctant to deny consumers the benefit of its deterrent presence at this time.

C. Conclusion

The Commission concludes that despite changes in Texas law since denial of the first Texas exemption petition, Texas law does not afford consumers protection as great as, or greater than, that afforded by the FTC Funeral Rule. Moreover, the Commission cannot conclude that Texas law enforcement is sufficient to warrant the grant of an exemption at this time.

The Commission therefore concludes that the Texas petition for exemption from the Funeral Rule should be denied.

List of Subjects in 16 CFR Part 453

Funeral, Funeral homes, Price disclosures, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-15069 Filed 6-24-91; 8:45 am]

BILLING CODE 6750-01-M

TFSC, amending footnote 4 to Exhibit H of the exemption petition.

[113] What is revealed by examination of the case files submitted by the TFSC is a very different pattern of enforcement submitted by the TFSC is a very different pattern of enforcement from that undertaken by the FTC. TFSC investigations are focused only on the facts of the particular complaint that triggered the investigation. During a Federal Trade Commission investigation, on the other hand, FTC staff looks for a pattern of illegal conduct. This is done by examining funeral home records for a period of months or years and surveying past customers to determine whether they received a general price list and other documents in accordance with the Rule. In most cases there also has been a substantial difference in civil penalty amounts imposed as a result of FTC enforcement actions and state enforcement actions.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-706-88]

RIN 1545-AM63

Civil Cause of Action for Failure To Release a Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to the civil cause of action under section 7432 of the Internal Revenue Code of 1986 (the "Code") for the knowing or negligent failure to release a lien under section 6325 of the Code. The cause of action for the failure to release a lien was created by section 6240 of the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations define certain key terms in the underlying statute, provide procedures for a taxpayer to notify the Internal Revenue Service of the failure to release a lien and create an administrative remedy that must be exhausted prior to the filing of a cause of action.

DATES: Writen comments and requests for a public hearing must be received by August 9, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL-706-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535-9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7432 of the Internal Revenue Code. The proposed regulations reflect the amendment of section 7432 by section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

Section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342) redesignated section 7432 of the Code as section 7433 and added a new section 7432. New section 7432 gives taxpayers the right to bring an action for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release, in accordance with section 6325 of the Code, a federal tax lien on property of the taxpayer. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7432 is the sum of (i) the actual, direct economic damages sustained by the taxpayer which, but for the actions of the officer or the employee of the Internal Revenue Service, would not have been sustained, and (ii) costs of the action. No action for damages may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

Section 6325 requires the Secretary to release a lien not later than 30 days after the day on which: (1) The Secretary finds that the underlying liability has been fully satisfied or has become legally unenforceable; or (2) the Secretary accepts a bond that is conditioned upon full payment of the underlying liability.

The proposed regulations provide that, for purposes of section 7432, a finding that the underlying liability has been fully satisfied or has become legally unenforceable is treated as made on the earlier of (1) the date the district director finds full satisfaction or legal unenforceability or (2) the date the district director receives a request for a certificate of release under § 401.6325–1(f) of the Income Tax Regulations, together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

The proposed regulations define actual, direct economic damages as actual pecuniary damages sustained by the taxpayer that would not have sustained but for an officer's of an employee's failure to release, in accordance with section 6325, a lien on property of the taxpayer. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual, pecuniary damages. Litigation and administrative costs incurred in seeking relief, through litigation or administrative processes, from the failure to release a lien are not recoverable under this section as actual, direct economic damages.

The proposed regulations define costs of the action recoverable as damages under section 7432(b)(2) as: (1) Fees of the clerk and marshall; (2) fees of the court reported for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the proposed regulations.

Reasonable litigation costs, including attorneys fees (generally limited to $75 per hour) not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorneys fees and other reasonable litigation costs not recoverable under section 7432.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7432, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history of the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988). An action under section 7432 is a collection action for these purposes.

The proposed regulations provide that an action may not be maintained in federal district court under this section unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) a copy of the notice of lien affecting the taxpayer's property, if available; (3) a copy of the request for release of lien under section 401.6325–1(f), if applicable; (4) the grounds for the claim; (5) a description of the damages incurred by the taxpayer; (6) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (7) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increasd amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of claim.

The proposed regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decisions is rendered on the claim or (2) 30 days from the date the administrative claim is filed. A taxpayer, however, must file an action with the federal disteict court within two years after the cause of action accures. Thus, if an administrtative claim is filed in the last 30 days before the two-year limitation period expires, a taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal

Revenue Service did not violate section 7432(a).

Effective Date

These proposed regulations would be effective for actions filed after the date final regulations are published in the **Federal Register.**

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 nor required. It also has been determind that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibilty Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is nor 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 businesses.

Comments and Requests for a 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 scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be as amended follow.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * * § 301.7432 also issued under 26 U.S.C. 7432(e).

Par. 2. Section 301.7432–1 is added under the heading "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 301.7432–1 Civil cause of action of failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action.

The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325–1(f), together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

(c) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release a lien in accordance with section 6325 of the Internal Revenue Code. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs described in this paragraph are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (see paragraph (j) of this section) or, solely to the extent described in paragraph (d) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the failure to release a lien, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. Litigation costs include the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the service of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the failure to release a lien, including costs incurred pursuing an administrative claim for damages under paragraph (f) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (c)(2)(i) of this section incurred in pursuing administrative relief.

(d) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(e) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (e)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date a decision is rendered on a claim filed in accordance with paragraph (f) of this section; or

(ii) The date 30 days after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) If an administrative claim is filed in accordance with paragraph (f) of this section during the last 30 days of the period of limitations described in paragraph (i) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 days to expire or for a decision to be rendered on the claim.

(f) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for actual, direct economic damages as defined in paragraph (c) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) in the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) A copy of the request for release of lien made in accordance with § 401.6325–1(f) of the Code of Federal Regulations, if applicable;

(iv) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(v) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(vi) The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(vii) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(g) *Notice of failure to release lien.* An administrative claim under paragraph (f) of this section shall be considered a notice of failure to release a lien.

(h) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (f) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(i) *Period of limitations*—(1) *Time of filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Cause of action accrues.* A cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(j) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(k) *Effective date.* This section applies with respect to civil actions under section 7432 filed in federal district court after June 25, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–14911 Filed 6–24–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[GL–707–88]

RIN 1545–AM75

Civil Cause of Action for Unauthorized Collection Actions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to the civil cause of action under section 7433 of the Internal Revenue Code of 1986 (the "Code") for certain unauthorized collection actions. The cause of action for unauthorized collection actions was created by section 6241 of the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations define certain key terms in the underlying statute and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The proposed regulations are needed to provide taxpayers with guidance and to create an administrative remedy in connection with this cause of action.

DATES: Written comments and requests for a public hearing must be received by August 9, 1991.

ADDRESSES: Send coments and requests for a public hearing to: Internal Revenue Service P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL–707–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202–535–9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7433 of the Internal Revenue Code. The proposed regulations reflect the addition of section 7433 to the Internal Revenue Code by section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647).

Explanation of Provisions

Section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342) added section 7433 to the Code. Section 7433 gives taxpayers the right to bring an action for damages in federal district court if, in connection with the collection of a federal tax, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7433 is the lesser of $100,000, or the sum (i) the actual, direct economic damages sustained as a proximate result of the internal revenue officer's or employee's wrongful conduct, and (ii) costs of the action. No action may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

The proposed regulations define actual, direct economic damages as actual pecuniary damages sustained by a taxpayer as a proximate results of reckless or intentional actions of an internal revenue officer or employee. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages. Litigation and administrative costs are not recoverable under this section as actual, direct economic damages.

The proposed regulations define costs of the action recoverable as damages under section 7433(b)(2) as: (1) Fees of the clerk and marshall; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the proposed regulations.

Reasonable litigation costs, including attorney's fees (generally limited to $75 per hour) not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under section 7433.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7433, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988).

The proposed regulations provide that an action may not be maintained in federal district court under this section unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of Chief, Special Procedures Function) of the district in which the taxpayer currently resides. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) the grounds, in detail, for the claim; (3) a description of the damages incurred by the taxpayer; (4) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (5) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

The proposed regulations provide that after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. A taxpayer, however, must file an action in federal district court within two years after a cause of action accrues. Thus, if an administrative claim is filed in the last six months before the two-year limitation period expires, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7433(a).

Effective Date

These proposed regulations would be effective with respect to actions filed after the date final regulations are published in the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures 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 proposed regulations will be submitted

to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Request for a 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 scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.7433–1 is added under the heaing "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

(a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of $100,000, or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or intentional actions of the officer or employee; and

(2) Costs of the action.

An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this section.

(b) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (see paragraph (h) of this section) or, soley to the extent described in paragraph (c) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under paragraph (e) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(d) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (d)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $100,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (including copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the ground that the International Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(i) *Effective date.* This section applies with respect to civil action under section 7433 filed after June 25, 1991.

Fred T. Goldberg Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-14912 Filed 6-24-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 223

[DoD Directive 5210.bb]

Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI)

AGENCY: Office of the Secretary. DoD.

ACTION: Proposed rule.

SUMMARY: This part implements Public Law 100-180, section 123, pertaining to the protection and prevention of the unauthorized dissemination of Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI) to distinguish it from a similar Department of Energy program. This part prescribes DoD policy for the identification and control of DoD UCNI and outlines procedures for document handling and marking, dissemination and transmission methods, safeguarding requirements, and criteria for withholding DoD UCNI from public release under the provisions of the Freedom of Information Act. This part also contains a topical guide describing types of information to be considered for control as DoD UCNI.

DATES: Written comments must be received by July 25, 1991.

ADDRESSES: Forward comments to the Office of the Deputy Under Secretary of Defense for Security Policy, room 3C285, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Colonel R.E. Pike, 703-697-5568.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 223

Classified information; Security measures.

Accordingly, title 32, chapter I, subchapter M is proposed to be amended to add part 223 to read as follows:

PART 223—DEPARTMENT OF DEFENSE UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (DOD UCNI)

Sec.

Authority: 10 U.S.C. 128 and 5 U.S.C. 552(b)(3).

§ 223.1 Purpose.

This part implements 10 U.S.C. 128 by establishing policy, assigning responsibilities, and prescribing procedures for identifying, controlling, and limiting the dissemination of unclassified information on the physical protection of DoD special nuclear material (SNM), vital equipment, and facilities. That information shall be referred to as "the Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI)," to distinguish it from a similar Department of Energy (DoE) program.

§ 223.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) Implements 10 U.S.C. 128, which is the statutory basis for controlling the DoD UCNI in the Department of Defense. Title 10, United Staets Code, Section 128 also constitutes the

authority for invoking 32 CFR part 286 to prohibit mandatory disclosure to DoD UCNI under the "Freedom of Information Act (FOIA)" in 5 U.S.C. 552.

(c) Supplements the security classification guidance contained in CG–W–5 [1] and CG–SS–1 [2] and DoD Instruction 5210.67 [3] by establishing procedures for identifying, controlling, and limiting the dissemination of unclassified information on the physical protection of DoD SNM.

(d) Applies to all SNM, regardless of form, in reactor cores or to other items under the direct control of the DoD Components.

(e) Applies equally to DoD UCNI under DoD control, except the statute applicable to DoE UCNI (42 U.S.C. 2011 *et seq.*) must be used with the concurrence of the DoE as the basis for invoking the FOIA (section 552 of 10 U.S.C.).

§ 223.3 Definitions.

(a) *Atomic energy defense programs.* Activities, equipment, and facilities of the Department of Defense used or engaged in support of the following:

(1) Development, production, testing, sampling, maintenance, repair, modification, assembly, utilization, transportation, or retirement of nuclear weapons or nuclear weapon components.

(2) Production, utilization, or transportation of DoD SNM for military applications.

(3) Safeguarding of activities, equipment, or faciliteis that support the functions in definitions (a) (1) and (2) of this section, including the protection of nuclear weapons, nuclear weapon components, or DoD SNM for military applications at a fixed facility or in transit.

(b) *Safeguards.* An integrated system of physical protection, material accounting, and material control measures designed to deter, prevent, detect, and respond to unauthorized possession, use, or sabotage of DoD SNM. Safeguards include the timely indication of possible diversion and credible ensurance that no diversion has occurred.

(c) *Sensitive facility.* A DoD SNM facility that performs a sensitive function (see definition (d) of this section).

(d) *Sensitive function.* A function in support of atomic energy defense programs whose disruption could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security (see definition (a) of this section).

(e) *Special nuclear material (SNM).* Plutonium, uranium enriched in the isotope–233 or in the Isotope–235, except source material or any material artificially enriched by any of the foregoing.

(f) *Vital equipment.* Equipment, systems, or components whose failure or destruction would cause an impact on safeguarding DoD SNM resulting in an unacceptable interruption to a national security program or an unacceptable impact on the health and safety of the public.

§ 223.4 Policy.

It is DoD policy:

(a) To prohibit the unauthorized dissemination of unclassified information on security measures for the physical protection of DoD SNM, vital equipment, and facilities.

(b) That the decision to protect unclassified information as DoD UCNI shall be based on a determination that its disclosure or dissemination might reasonably result in compromising security measures for protecting DoD SNM and that such compromise could reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, and facilities.

(c) That DoD personnel shall not use that authority to withhold information from the appropriate committees of the Congress.

§ 223.5 Responsibilities.

(a) The Under Secretary of Defense for Policy shall:

(1) Administer the DoD program for controlling DoD UCNI.

(2) Coordinate DoD compliance with the DoE program for controlling DoE UCNI.

(3) Prepare and maintain the reports required by 10 U.S.C. 128. Those reports shall have the following information:

(i) Identification of the type of information to be controlled as DoD UCNI. It is not necessary to report each document or numbers of documents.

(ii) Justification for identifying the type of information to be controlled as DoD UCNI.

(iii) Certification that only the minimal information necessary to protect the health and safety of the public or the common defense and security is being controlled as DoD UCNI.

(b) The Assistant Secretary of Defense (Public Affairs) shall provide guidance to the Under Secretary of Defense for Policy (USD(P)), other elements of the OSD, and the Heads of the DoD Components on the FOIA (5 U.S.C. 552), as implemented in 32 CFR part 286, as it applies to the DoD UCNI Program.

(c) The Heads of the DoD Components shall:

(1) Implement this part in their DoD Components.

(2) Advise the USD(P) of the following, when information not in the guidelines, in appendix B to this part 223, is determined to be DoD UCNI:

(i) Identification of the type of information to be controlled as DoD UCNI. It is not necessary to report each document or numbers of documents.

(ii) Justification for identifying the type of information as DoD UCNI, based on the guidelines in Appendix B to this part 223 and prudent application of the adverse effects test.

§ 223.6 Procedures.

Appendix A to this part 223 outlines the procedures for controlling DoD UCNI. Appendix B to this part 223 provides general and topical guidelines for identifying information that may qualify for protection as DoD UCNI. The procedures and guidelines in appendices A and B to this part 223 complement the DoD Component programs to protect other DoD-sensitive unclassified information and may be used with them.

§ 223.7 Information requirements.

(a) Section 128 of 10 U.S.C. requires that the Secretary of Defense prepare on a quarterly basis a report to be made available on the request of any interested person. The report does not require the collection and collation of detailed statistical data or identification of specific documents protected under the statute. The intent of the report is to identify types or categories of information being protected under the statute and to provide the justification for protecting the information. Newly identified types of information determined to be DoD UCNI by the Heads of the DoD Components shall be submitted to the USD(P) for review and inclusion in the DoD UCNI guidelines in appendix B to this part 223.

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[1] Controlled document. Not releasable to the public.

[2] Requests may be forwarded to U.S. Department of Energy (Forrestal Building), 100 Independence AVenue SW., Attentin: Distribution Office of DOE Publications, Washington, DC 20585.

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(b) The report is exempt from licensing in accordance with DoD 7750.5–M,[4] paragraph E.4.e.

Appendix A to Part 223—Procedures for Identifying and Controlling DoD UCNI

A. General

1. These procedures for identifying and controlling DoD UCNI are provided as guidance for the Heads of the DoD Components to implement the Secretary of Defense's authority for controlling and limiting the disclosure and dissemination of unclassified information about the physical protection of DoD SNM, vital equipment, or facilities.

2. The decision to protect unclassified information as DoD UCNI shall be based on a determination that its disclosure or dissemination could reasonably result in compromising security measures for protecting DoD SNM and that such compromise could reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities.

3. DoD UCNI shall be identified, controlled, marked, transmitted, and safeguarded in the DoD Components, the North Atlantic Treaty Organization (NATO), and among DoD contractors, consultants, and grantees authorized to conduct official business for the Department of Defense. Contracts requiring the preparation of unclassified information that could be DoD UCNI shall have the requirements for identifying and controlling the DoD UCNI.

4. DoE GG–2 [1] and DoE Orders 5635.4 [2] and 5650.3 [3] provide background on implementation of the UCNI Program in the DoE. The DoD Components maintaining custody of DoE UCNI should refer to those documents for its identification and control.

B. General Criteria

1. The Secretary of Defense's authority for prohibiting the unauthorized disclosure and dissemination of DoD UCNI may be exercised by the Heads of the DoD Components and by the officials to whom such authority is specifically delegated by the Heads of the DoD Components. The disclosure and dissemination of DoD UCNI may be prohibited, if the disclosure or dissemination could reasonably be expected to have a significant adverse impact on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities.

2. DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of an illegal production, theft, diversion, or sabotage if the information proposed for protection were made available for public disclosure and dissemination. The determination to protect specific documents or information is not related to the ability of DoD UCNI to be obtained by other sources. The degree to which, if any, that information has been publicly disseminated shall not be considered before determining that a document or information is DoD UCNI.

3. For determining the control of DoD UCNI, the cognizant official should consider how the unauthorized disclosure or dissemination of such information could assist a potential adversary in the following:

a. Selecting a target for an act of theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities (e.g., relative importance of a facility or the location, form, and quantity of DoD SNM). Information that can be obtained by observation from public areas outside controlled locations should not be considered as DoD UCNI.

b. Planning or committing an act of theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities (e.g., design of security systems; building plans; methods and procedures for transfer, accountability, and handling of DoD SNM; or security plans, procedures, and capabilities).

c. Measuring the success of an act of theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities).

d. Illegally producing a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique DoD SNM needed to fabricate such a device; or location of a nuclear weapon).

e. Dispersing DoD SNM in the environment (e.g., location, form, and quantity of Dod SNM).

C. Identifying DoD UCNI

1. To be considered for protection as DoD UCNI, the information must:

a. Be unclassified.

b. Pertain to security measures, including plans, procedures, and equipment, for the physical protection of DoD SNM, vital equipment, or facilities.

c. Meet the adverse effects test; i.e., that the disclosure or dissemination of the information could result in compromising security measures for protecting DoD SNM and that such compromise could reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities.

2. Information, in the categories in section C. of Appendix B to this part 223, about DoD SNM should be considered for protection as DoD UCNI.

3. Material originated before the effective date of those procedures, which is found in the normal course of business to have DoD UCNI, shall be protected as DoD UCNI. There is no requirement to conduct detailed file searches to retroactively identify and control DoD UCNI. As existing documents or materials are withdrawn from file, they should be reviewed to determine if they meet the criteria for protection as DoD UCNI and marked and controlled, accordingly.

D. Markings

1. An unclassified document with DoD UCNI shall be marked "DoD Unclassified Controlled Nuclear Information" at the bottom on the outside of the front cover, if any, and on the outside of the back cover, if any.

2. In an unclassified document, an individual page that has DoD UCNI shall be marked "DoD Unclassified Controlled Information" at the bottom of the page.

3. In a classified document, an individual page that has both DoD UCNI and classified information shall be marked at the top and bottom of the page with the highest security classification of information appearing on that page. In marking sections, parts, paragraphs, or similar portions, the parenthetical term "(DoD UCNI)" shall be used for those portions with DoD UCNI. In a classified document, an individual page that has DoD UCNI, but no classified information, shall be marked "DoD Unclassified Controlled Information" at the bottom of the page. The DoD UCNI marking may be combined with other markings, if all relevant statutory and regulatory citations are included.

4. Other material (e.g., photographs, films, tapes, or slides) shall be marked "DoD Unclassified Controlled Nuclear Information" to ensure that a recipient or viewer is aware of the status of the information.

E. Dissemination and Transmission

1. DoD UCNI may be disseminated in the DoD Components, the NATO, and among the DoD contractors, consultants, and grantees on a need-to-know basis to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means to preclude unauthorized disclosure or dissemination. Contracts that shall require access to DoD UCNI shall require compliance with this part and the DoD Component regulations and have the requirements for the marking, handling, and safeguarding of DoD UCNI.

2. DoD holders of DoD UCNI are authorized to convey such information to officials in other Departments or Agencies on a need-to-know basis to fulfill a Government function. Transmittal documents shall call attention to the presence of DoD UCNI attachments using an appropriate statement in the text, or marking at the bottom of the transmittal document, that "The attached document contains DoD Unclassified Controlled Nuclear Information (DoD UCNI)." Similarly, documents transmitted shall be marked, as prescribed in section D of this appendix.

3. DoD UCNI transmitted outside the Department of Defense requires application

[4] See footnote 3 to § 223.1(c).
[1] See footnote 2 to § 223.1(c).
[2] See footnote 2 to § 223.1(c).
[3] See footnote 2 to § 223.1(c).

of an expanded marking to explain the significance of the DoD UCNI marking. That may be accomplished by typing or stamping the following statement on the document before transfer:

DEPARTMENT OF DEFENSE UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION EXEMPT FROM MANDATORY DISCLOSURE

(5 U.S.C. 552(b)(3), as authorized by 10 U.S.C. 128)

4. Documents with DoD UCNI shall be transported so to preclude unauthorized disclosure. When not commingled with classified information, DoD UCNI may be sent by first-class mail in a single, opaque envelope or wrapping.

5 DoD UCNI may only be discussed or transmitted over an unprotected telephone or telecommunications circuit (to include facsimile transmissions) in an emergency. More secure means of communications shall be used, when practical.

6. Each part of electronically transmitted messages with DoD UCNI shall be marked appropriately. Unclassified messages with DoD UCNI shall have the abbreviation "DoD UCNI" before the beginning of the text.

7. DoD UCNI may be processed, stored, or produced on stand-alone personal computers, or shared-logic word processing systems, if protection from unauthorized disclosure or dissemination, in accordance with the procedures in section F of this Appendix 2 can be ensured.

8. A document marked as having DoD UCNI may be reproduced minimally without permission of the originator and consistent with the need to carry out official business.

F. Safeguarding DoD UCNI

1. During normal working hours, documents determined to have DoD UCNI shall be placed in an out-of-sight location, or otherwise controlled, if the work area is accessible to unescorted personnel.

2. At the close of business, DoD UCNI material shall be stored so to preclude disclosure. Storage of such material with other unclassified documents in unlocked receptacles; i.e., file cabinets, desks, or bookcases, is adequate, when normal Government or Government-contractor internal building security is provided during nonduty hours. When such internal building security is not provided, locked rooms or buildings normally provide adequate after-hours protection. If such protection is not considered adequate, DoD UCNI shall be stored in locked receptacles; i.e., file cabinets, desks, or bookcases.

3. Nonrecord copies of DoD UCNI materials must be destroyed by tearing each copy into pieces to reasonably preclude reconstruction and placing the pieces in regular trash containers. If the sensitivity or volume of the information justifies it, DoD UCNI material may be destroyed in the same manner as classified material rather than by tearing. Record copies of DoD UCNI documents shall be disposed of, in accordance with the DoD Components' record management regulations. DoD UCNI on magnetic storage media shall be disposed of by overwriting to preclude its reconstruction.

4. The unauthorized disclosure of DoD UCNI material does not constitute disclosure of DoD information that is classified for security purposes. Such disclosure justifies investigative and administrative actions to determine cause, assess impact, and fix responsibility. The DoD Component that originated the DoD UCNI information shall be informed of its unauthorized disclosure and the outcome of the investigative and administrative actions.

G. Requests for Public Release of DoD UCNI

Title 32, Code of Federal Regulations, part 286 applies. Information that qualifies as DoD UCNI, under 10 U.S.C. 128, is exempt from mandatory disclosure under 5 U.S.C. 552. Consequently, requests for the public release of DoD UCNI shall be denied under section 552(b)93), citing 10 U.S.C. 128 as authority.

Appendix B to Part 223—Guidelines for the Determination of DoD UCNI

A. Use Of Determination Of DoD UCNI Guidelines

1. These guidelines for determining DoD UCNI are the bases for determining what unclassified information about the physical protection of DoD SNM, vital equipment, or faciliities in a given technical or programmatic subject area is DoD UCNI.

2. The decision to protect unclassified information as DoD UCNI shall be based upon a determination that its disclosure or dissemination might reasonably result in compromising security measure for protecting DoD SNM and that such compromise might reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, and facilities.

B. General

1. The policy for protecting unclassified information about the physical protection of DoD SNM, vital equipment, or facilities is to protect the public's interest by controlling certain unclassified Government information so to prevent the adverse effects described in §223.4 of this part and in appendix A to this part, without unduly restricting public availability of information that would not result in those adverse effects.

2. In controlling DoD SNM infomation, only the minimum restrictions needed to protect the health and safety of the public or the common defense and security shall be applied to prohibit the disclosure and dissemination of DoD UCNI.

3. Any material that has been, or is, widely and irretrievably disseminated into the public domain and whose dissemination was not, or is not, under Government control is exempt from control under these guidelines. However, the fact that information is in the public domain is not a sufficient basis for determining that similar or updated Government-owned and-controlled information in another document or material is not, or is no longer, DoD UCNI; case-by-case determinations are required.

C. Topical Guidance

The following elements of information shall be considered by the DoD Components during the preparation of unclassified information about the physical protection of DoD SNM to determine if it qualifies for control as DoD UCNI

1. Vulnerability Assessments

a. General vulnerabilities that could be associated with specific DoD SNM, vital equipment, or facility locations.

b. The fact that DoD SNM facility security-related projects or upgrades are planned or in progress.

c. Identification and description of security system components intended to mitigate the consequences of an accident or act of sabotage at a DoD SNM facility.

2. Material Control and Accountability

a. Total quantity or categories of DoD SNM at a facility.

b. Control and accountability plans or procedures.

c. Receipts that, cumulatively, would reval quantities and categories of DoD SNM of potential interest to an adversary.

d. Measured discards, decay losses, or losses due to fission and transmutation for a reporting period.

e. Frequency and schedule of DoD SNM inventories.

3. Facility Description

a. Maps, conceputual design, and construction drawings of a DoD SNM facility showing construction characteristics of building and associated electrical systems, barriers, and back-up power systems not observable from a public area.

b. Maps, plans, photographs, or drawings of man-made or natural features in a DoD SNM facility not observable from a public area; i.e., tunnels, storm or waste sewers, water intake and discharge conduits, or other features having the potential for concealing surreptitious movement.

4. Intrusion Detection and Security Alarm Systems

a. Information on the layout or design of security and alarm systems at a specific DoD SNM facility, if the information is not observable from a public area.

b. The fact that a particular system made or model has been installed at a specific DoD SNM facility, if the information is not observable from a public area.

c. Performance characteristics of installed systems.

5. Keys, Locks Combinations, and Tamper-Indicating Devices

a. Types and models of keys, locks, and combinations of locks used in DoD SNM facilities and during shipment.

b. Method of application of tamper-indicating devices.

c. Vulnerability information available trom unclassified vendor specifications.

6. Threat Response Capability and Procedures

a. Information about arrangements with local, State, and Federal law enforcement

Agencies of potential interest to an adversary.

b. Information in "nonhostile" contingency plans of potential value to an adversary to defeat a security measure; i.e. fire, safety, nuclear accident, radiological release, or other administrative plans.

c. Required response time of security forces.

7. Physical Security Evaluations

a. Method of evaluating physical security measures not observable from public areas.

b. Procedures for inspecting and testing communications and security systems.

8. In-Transit Security

a. Fact that a shipment is going to take place.

b. Specific means of protecting shipments.

c. Number and size of packages.

d. Mobile operating and communications procedures that could be exploited by an adversary.

e. Information on mode, routing, protection, communications, and operations that must be shared with law enforcement or other civil agencies, but not visible to the public.

f. Description and specifications of transport vehicle compartments or security systems not visible to the public.

9. Information on Nuclear Weapon Stockpile and Storage Requirements, Nuclear Weapon Destruction and Disablement Systems, and Nuclear Weapon Physical Characteristics.

Refer to CG–W–5 for guidence about the physical protection of information on nuclear weapon stockpile and storage requirements, nuclear weapon destruction and disablement systems, and nuclear weapon physical characteristics that may, under certain circumstances, be unclassified. Such information meeting the adverse effects test shall be protected as DoD UCNI.

Dated: June 19, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15051 Filed 6–24–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF05

Adjudication; Pension, Compensation, and Dependency and Indemnity Compensation Renouncement

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish a specific effective date of discontinuance when compensation, pension, or dependency and indemnity compensation benefits are renounced. This change is necessary because variations in workload between regional offices may cause some claims to be processed less expeditiously than others, resulting, under current rules referring to termination as of date of last payment, in different termination dates. The intended effect of this amendment is to establish a uniform termination date when monetary benefits are renounced.

DATES: Comments must be received on or before July 25, 1991. This change is proposed to be effective thirty days after the date of publication of the final rule. Comments will be available for inspection until August 4, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until August 4, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Title 38, United States Code, section 3106 requires that, upon the filing of a written renouncement, payment of monetary benefits shall be terminated. Currently, 38 CFR 3.500(q) provides that the effective date of discontinuance when benefits are renounced will be the date of last payment. Because of differences in workload among regional offices, as well as fluctuations within the same office, some renouncements might be processed less expeditiously than others, and claims received by VA on the same date could result in benefits being terminated on different dates. A later effective date might not be advantageous to some beneficiaries who, for whatever reason, wish to terminate VA benefits without delay. We proposed to establish the date for the discontinuance of monetary benefits as the last day of the month in which the renouncement is received by amending 38 CFR 3.500(q).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3, subpart A is proposed to be amended as set forth below.

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

§ 3.500 [Amended]

2. In § 3.500(q), remove the words "Date of last payment." and add, in their place, the words "Last day of the month in which the renouncement is received."

[FR Doc. 91–5022 Filed 6–24–91; 8:45 am]

BILLING CODE 8320–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

Rules of Practice and Procedure

[Docket No. RM91-1]

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking solicits suggestions from interested persons for improvements in the Commission's rules of practice. These suggestions could lead to a further notice containing specific proposed rule changes to increase the fairness, comprehensiveness, and expedition of our proceedings.

DATES: Comments responding to this advance notice must be submitted on or before August 26, 1991.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION:

Periodically the Commission conducts a general review of its rules of practice to determine whether, where, and how the procedures by which we carry out our statutory responsibilities could be improved. Since this was last undertaken, changes to particular rules have been made as the need became apparent.

We are issuing this advance notice of proposed rulemaking in the hope of ascertaining from all interested persons what areas appear to them to remain in need of attention, after a substantial period of experience with the current configuration of the rules. Our inquiry, as is appropriate in procedural rulemaking, is not to elicit suggestions for possible change in the statutory process provided for by 39 U.S.C. 3624 et seq., but to identify opportunities to improve the way that process is carried out in actual practice.

In preparing this advance notice, however, we have not restricted our view to the phases of the process that take place in the hearing room. Other aspects of the process may offer the chance for improvements contributing, even if less directly, to the fair, economical, and expeditious decision of chapter 36 cases.

Without wishing to limit the scope of contributions, we would find it particularly helpful to have comments focused on these aspects of our process:

1. Information the Postal Service files periodically with the Commission (see 39 CFR part 3001, subpart G).
2. The process of public notice and provision for intervention at the outset of a ch. 36 case (see 39 CFR 3001.17-3001.20b).
3. The forms of public participation (i.e., intervention, limited participation, the "commenter rule"—see 39 CFR 3001.19-3001.20b).
4. Prehearing conferences (see 39 CFR 3001.24).
5. Discovery and incorporation of discovery responses as written cross-examination (see 39 CFR 3001.25-3001.28, 3001.31a, 3001.33).
6. Oral cross examination (see 39 CFR 3001.30).
7. Briefing and oral argument (see 39 CFR 3001.34, 3001.36-3001.37).
8. Motion practice (see 39 CFR 3001.21-3001.22).

We would welcome comments identifying aspects of the process that are particularly valuable to participants; those that are of less value; those that, while valuable, impose particularly substantial time and expense burdens; or those that are neither especially valuable nor free from substantial burdens.

Other areas in which comments would be especially helpful include:

1. Would participants be aided by an arrangement under which the Postal Service provided advance notice and some additional information before it actually made a 39 U.S.C. ch. 36 filing? If so, could the process of familiarization with the issues begin before the statutory time (in a case subject to 39 U.S.C. 3622) began to run—thereby allowing the Commission to begin the actual hearing process earlier? What would be the countervailing costs of such an arrangement? What sorts of additional "pre-filing" information would be useful? readily available? not unduly prejudicial to the Service's ability to litigate its case? [1]
2. Should the Commission use substantive rulemaking to avoid relitigation of technical issues already extensively explored in litigated proceedings? Would such a shift in technique produce net benefits by reducing the time and expense consumed by individual cases? Net detriments by decreasing the flexibility of the parties to suggest and the Commission to adopt novel approaches and techniques?

Following consideration of the comments solicited herein, the Commission will determine what further rulemaking proceedings are warranted and will give notice of its determination in the **Federal Register.**

Issued by the Commission on June 14, 1991.

Charles L. Clapp,

Secretary.

[FR Doc. 91-14686 Filed 6-24-91; 8:45 am]

BILLING CODE 7710-FW-M

[1] This set of questions is cast in terms of Postal Service filings alone because only the Postal Service may initiate a rate case or a classification case that involves changing rates [39 U.S.C. 3622(a)]; and only these cases are subject to a statutory time limit.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[WO-230-02-6310-24 1A]

RIN 1004-AB56

Sales Administration: Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This rule would amend provisions of existing regulations in 43 CFR Part 5470—Contract Administration—Modification—Assignment. It is necessary to amend the existing regulations to provide more flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by the expiration date. The proposed rule would provide the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations.

DATES: Comments must be received on or before July 5, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there any many seasonal restrictions put into timber sale contracts that tend to limit the length of operating seasons. These factors have caused some problems with our existing extension policy, and the industry has asked the Bureau of Land Management (BLM) to re-examine the requirement for reappraisal of timber sale contracts before granting an extension.

The BLM published a proposed rule on July 3, 1990 (55 FR 27477). Since the proposed rule was published, the northern spotted owl has been listed under the Endangered Species Act. This listing has made it necessary for the BLM to stop or delay operations on many timber sale contracts that had been executed while conferences on the sales were held with the Fish and Wildlife Service (FWS) to determine the impact these sales might have on the spotted owl. These delays will in some cases make it impossible for the purchaser to complete cutting and removal in the time specified in the timber sale contract. Under the current regulations, the BLM cannot extend the time for cutting and removal of these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when he was prevented from doing so by the Government. This is not a fair way to deal with our timber sale purchasers. To pursue such a course would likely result in much litigation between the BLM and timber sale purchasers.

For the reasons stated above, and because the proposed rule did not contain a redesignation found to be necessary, the BLM is issuing a reproposed rule at this time in order to allow the public to comment on the necessary changes from the original proposed rule. We are limiting the comment period to 10 days because some timber contracts are scheduled to expire in early July, 1991, and performance has been impossible through no fault of these purchasers. Comments are requested on the changes made from the proposed rule to determine whether this proposed rule needs to be amended before final promulgation.

Two letters containing a number of comments were received on the proposed rule, one from an industry association and one from a BLM field office. Both letters supported the proposed rule and favored expanding the scope of the rule to cover some additional situations.

One comment suggested changing the terminology to deal with adjustment of the contract termination date rather than attempting to provide authority to keep a contract in force for up to 30 days beyond the termination date. The BLM timber sale contracts do not have a "termination date." The contract has a date upon which rights to cut and remove timber expire. A contract is not terminated until all the requirements of the contract have been fulfilled, including cutting, removal, and site preparation. This comment is not consistent with BLM procedures and was not adopted for inclusion in the reproposed rule.

One comment suggested that the provision for a 30-day window for adjustment should include some standard for measuring or earning a postponement of the deadline for cutting and removal so that a BLM field representative would not have to "play God" in deciding if the contract holder does or does not qualify for an extension. The contracting officer (this title has been changed from "authorized officer" referred to in the proposed rule in order to conform to the contract form employed by the BLM) will follow a rule of reasonableness and consider the amount of time lost for any valid reason, both in making a decision of whether to grant an extension, and in determining the length of such extension. This is a part of the normal decisionmaking process. It is not necessary to spell out in the regulations each possible factor that might justify an extension or to include that amount of detail in the regulations. The comment was not adopted.

Two comments were received that suggested that the rule be expanded to cover delays in operations of the contract due to such things as: court actions delaying the operations of the sale, unusual natural/catastrophic events either on BLM land or other forest land, the loss of a manufacturing facility due to fire or other unanticipated causes, loss of access to the sale, unanticipated developments involving threatened or endangered species listings, archaeological finds, and so forth. The other comment suggested that the rule be expanded to cover delays in operation under the contract due to consultation with the FWS for timber sale contracts in spotted owl habitat, additional contract requirements incorporated in contract modifications requested by the Government, reviews for cultural resource values, or court injunctions obtained by persons not party to the contract. These comments have merit and have been partially adopted for inclusion in the reproposed rule. Delays caused by government agency intervention, whether State or Federal, and by court injunctions brought by third parties, would justify extension without reappraisal under the new proposed rule, but delays occasioned by causes beyond the purchaser's control, and also beyond the control of the United States, would not. Such causes would be considered risks of doing business.

One comment suggested language to clarify proposed § 5473.1(a) and (b). This comment has merit. However, in considering amendatory language, it was determined that § 5463.2 Extension of time., which is closely related to § 5473.1(b) of the original proposed rule, was improperly located in part 5463 on Expiration of Time for Cutting and Removal. In this proposed rule, therefore, this section has been relocated in part 5470 and adapted to address the concerns expressed in the original proposed rule and in the comment.

The proposed rule published today incorporates the changes suggested in and adopted from the comments received on the original proposed rule, and revisions to make the regulations more clear. It would provide that an extension may be granted for time lost as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by the requirements for consultation with the FWS under the Endangered Species Act; (3) reviews for cultural resource values; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions would provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above would be granted without reappraisal.

The rule also would provide that short extensions of up to 30 days of operating time may be granted without reappraisal, if the reason for delay in cutting or removal was a cause beyond the control of the purchaser and was without his fault or negligence. The rationale for this provision is that if the contract can be finished in this short

period of time the purchaser has shown substantial compliance and will be allowed the short extension to complete the contract without penalty.

The principal author of this proposed rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule will not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR

Part 5460

Forests and forest products, Government contracts, Public lands.

Part 5470

Forests and forest products, Government contracts, Public lands.

Under the authorities cited below, parts 5460 and 5470 of group 5000, subchapter E, chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 5460—SALES ADMINISTRATION—[AMENDED]

1. The authority citation for part 5460 is revised to read:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

§ 5463.1 [Amended]

2. Section 5463.1 is amended by removing the phrase "§§ 5463.2 and 5473.1" at the end of the section and replacing it with the term "Subpart 5473".

§ 5463.2 [Removed]

3. Section 5463.2 is removed.

PART 5470—CONTRACT MODIFICATION—EXTENSION ASSIGNMENT

4. The authority citation for part 5470 continues to read:

Authority: Sec. 5, Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e, unless otherwise noted.

5. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

6. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or neglience, the contracting officer may grant an extension of time, upon written request of the purchaser. Such extension will not to exceed one year, and will require an appraisal, if the delay was not imposed by the United States or any State government agency under paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser.

(b) The contracting officer may grant an extension of time without reappraisal, not to exceed 30 days of operating time, if the conditions of paragraph (a) of this section are met. No additionl extensions may be granted without reappraisal.

(c) On a showing satisfactory to the contracting officer that a good faith effort was made to fulfill the contract prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resources values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) For purposes of this provision, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objections. The State Director may also waive reappraisal for such extension.

3. Section 5473.4–1 is amended by revising paragraph (a) to read as follows:

§ 5473.4–1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the contracting officer of the material sold will be in accordance with this section.

* * * * *

Dated: February 5, 1991.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR DOC. 91–15164 Filed 6–21–91; 11:17 am]

BILLING CODE 4310–84–M

N tices

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Nutrition Guidance for Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of public comment.

SUMMARY: The U.S. Department of Agriculture announces the request for public comment on the publication, Nutrition Guidance for Child Nutrition Programs.

DATES: Written comments on the Draft Guidance must be postmarked no later than August 9, 1991.

ADDRESSES: Written comments on the Draft Guidance should be sent to: Cynthia Ford, Nutrition and Technical Services Division USDA, FNS, 3101 Park Center Drive, room 608, Alexandria, Virginia 22302, (703) 756–3556.

FOR FURTHER INFORMATION CONTACT: (1) For a copy of the Draft Guidance: Write to Lorie Conneen (USDA) at 3101 Park Center Drive, room 608, Alexandria, Va. 22302 or phone (703) 756–3556. (2) For other information: Cynthia Ford (USDA) at (703) 756–3556 or Rachel Ballard-Barbash (DHHS) at (202) 472–5370.

SUPPLEMENTARY INFORMATION: The Child Nutrition and WIC Reauthorization Act of 1989 requires the Secretary of Agriculture and the Secretary of Health and Human Services to jointly develop a publication to be entitled, Nutrition Guidance for Child Nutrition Programs. This publication is to be developed by November 1991 and disseminated within 6 months of that date to all school food service authorities, institutions, and organizations participating in the Child Nutrition Programs.

The target audience, approximately 275,000 program cooperators, varies from food service directors of large multi-unit school systems to family day care providers in a home setting.

This nutrition guidance, developed jointly by the U.S. Departments of Agriculture and Health and Human Services, gives nutrition advice to those responsible for preparing meals for children under the Child Nutrition Programs. This guidance is based on Nutrition and Your Health: Dietary Guidelines for Americans, the third edition, 1990, which provides advice for healthy Americans ages 2 and over—not for younger children and infants, whose dietary needs differ. Congressional report language states that the guidance is not to be quantitative in nature and that specific standards are not to be set.

The Nutrition Guidance for Child Nutrition Programs is the first step in a series of revised technical assistance efforts to help food service personnel and other persons responsible for feeding children improve children's health by offering meals that reflect current dietary guidelines. Future USDA plans are to review the meal patterns for all the Child Nutrition Programs, revise the menu planning guides, update publications describing the nutrient value and usage of USDA commodities and provide a wall chart which displays the information in an easy-to-use manner. Additional long range efforts are under consideration.

For those persons interested in commenting on the draft publication, written comments may be submitted to the above address. To be assured of consideration, comments must be postmarked no later than August 9, 1991.

Dated: June 13, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service, U.S. Department of Agriculture.

[FR Doc. 91–15066 Filed 6–24–91; 8:45 am]
BILLING CODE 3410–30–M

Forest Service

Management Guidelines for the Northern Goshawk in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Adoption of interim policy.

SUMMARY: Because of concern for the habitat needs of the northern goshawk (*Accipiter gentilis*) the Regional Forester, Southwestern Region of the U.S. Forest Service, is issuing interim management guidelines to provide protection for the northern goshawk, while allowing for continued, but modified, multiple-use activities within suitable northern goshawk habitat, including limited timber harvest. These guidelines are being issued as interim policy in the Forest Service Manual while the Southwestern Region collects more information on this sensitive species to provide a better understanding of their habitat preferences and other characteristics of the population.

Concern about the habitat needs and popoulation viability of the northern goshawk led the Regional Forester, Southwestern Region, to classify it as a sensitive species on all National Forest System lands in Arizona and New Mexico in 1982. The northern goshawk is not being considered for listing under the Endangered Species Act by the U.S. Fish and Wildlife Service at this time.

These interim management guidelines provide direction for Southwestern Region forests to use when northern goshawk nest sites or other evidence of reproductive activities are found on National Forest System lands. The guidelines call for a northern goshawk post-fledging family area (PFA) to be established whenever and wherever a northern goshawk nest site is located or evidence of reproductive activity (such as the presence of courtship behavior or young birds) is discovered. The guidelines also provide standard definitions and methodology to use when establishing and managing northern goshawk nest sites, replacement nest sites and PFAs.

The guidelines were developed based on information assembled and recommended by the Goshawk Scientific Committee. The scientific committee was composed of Forest Service management and research biologists and silviculturists. The scientific committee worked with the Goshawk Task Force Group, an informal group with representatives from Federal and State agencies, environmental groups, concerned citizens, and the timber industry. The task force provided recommendations to the Regional Forester, Southwestern Region on northern goshawk management.

This interim policy is being published under Forest Service regulations at 36 CFR 216, Involving the Public in the Formulation of Forest Service

Directives. It is being published in advance of giving the public an opportunity to comment because of the immediate need to protect occupied northern goshawk habitat while gathering additional data about the northern goshawk during this field season. However, the Forest Service encourages and welcomes comments on this interim policy. Comments received on this interim policy will be used by the Forest Service when making future revisions to the management guidelines.

EFFECTIVE DATE: June 6, 1991. Comments on the guidelines should be received on or before September 6, 1991 to ensure use in the next policy revision.

ADDRESSES: Direct comments to: David F. Jolly, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Director, Wildlife and Fisheries or Sandra Knight Assistant Threatened, Endangered and Sensitive Species Program Manager, (505) 842–3260 or 842–3268.

SUPPLEMENTARY INFORMATION: .

Background and Need for Guidelines

The Southern Region has been concerned with the viability of the northern goshawk for the last decade. In 1982 the goshawk was placed on the Regional Forester's sensitive species list. Goshawk inventories and monitoring began in the early 1970's on the Kaibab National Forest, which had the Region's highest known density of goshawk nests. This work started because of concern over possible population declines. The monitoring effort was intensified in 1983 in cooperation with the Arizona Game and Fish Department to provide information for an extensive data base on goshawk nesting activity and reproductive success on the Kaibab Plateau.

In 1984, a joint Forest Service-New Mexico Game and Fish study was initiated which included the first telemetry (radio tracking) data collected on the goshawk in North America. In 1990 the Southwest Region of the Forest Service awarded a contract to develop a standard scientific protocol for surveying and monitoring northern goshawks. This protocol is now in draft form, undergoing continued scientific review, and has been provided to Region's forests for optional use this field season.

The goshawk is on the Forest Service sensitive species list. It is not on the Federal threatened and endangered species list nor is it presently under consideration for listing. It is a candidate for the State of Arizona's list of threatened native wildlife species. It is not on the State of New Mexico's list, which was recently revised and expanded.

In February, 1990 Regional Forester David F. Jolly received a letter signed by a number of Arizona and New Mexico environmental groups. The letter expressed concern over goshawk population viability based partially on the requirements of the implenting regulations for the National Forest Management Act.

In March of 1990, the Regional Forester decided to review the status of the goshawk. This internal review of goshawk data for Arizona and New Mexico, conducted from March to August, resulted in the decision in August, 1990, to establish a Goshawk Scientific Committee and a Goshawk Task Force Group to review goshawk management needs for the Southwest Region.

The Scientific Committee, composed of Forest Service management and research biologists and silviculturists, began meeting in October, 1990. They consulted with other top experts on goshawk biology and reviewed all available information on goshawk populations in the Southwest and northern goshawk habitat requirements and biology in general. They provided, and will continue to provide, scientific information on goshawk requirements to the Regional Forester and the Goshawk Task Force Group.

The Goshawk Task Force Group was made up of environmental groups, concerned citizens, and timber industry representation, as well as members from the U.S. Fish and Wildlife Service, the Arizona Game and Fish Department, the New Mexico Game and Fish Department and the Forest Service. Task Force Group meetings began early in January, 1990. The Goshawk Task Force Group will continue to review the findings of current studies being conducted by the Southwestern Region and the comments received by the Region concerning these guidelines when providing recommendations to the Regional Forester during future revisions of these guidelines. The Scientific Committee and the Goshawk Task Force Group continued to meet periodically since their inception.

The scientific committee approached goshawk management needs by describing desired conditions for nest sites, replacement nest sites, post-family fledging areas (PFAs) and foraging areas from published and unpublished research information. Nest sites are small areas (30 acres average) and include the nest tree and the area surrounding the nest tree that contain perches and roosts. They may contain one or more alternate nests. Replacement nest sites are areas with similar characteristics to the nest site that can be used sometime in the future.

PFAs represent an area of concentrated use by the goshawk family after the young leave the nest and until they are no longer dependent on the adults for food. The PFA provides the young hawks with the necessary hiding cover and prey and include the nest sites and replacement nest sites. A PFA is 600 acres in size.

Foraging areas (averaging about 6,000 acres in size) are more difficult to describe because of the larger size of the area and the variety of habitat requirements of goshawk prey species. The Scientific Committee is presently reviewing all available information on northern goshawk prey species. The habitat needs of the goshawk's principal prey species in the Southwest will be used to identify the necessary conditions for the foraging area. The final recommendations of the Scientific Committee are expected later this year.

The Scientific Committee's current recommendations for nest sites, replacement nest sites and PFAs serve as the basis for this interim management direction.

To improve our information base about this species, the Southwestern Region is increasing the survey effort to inventory suitable habitat and conduct studies on the northern goshawk. In 1991, the Region will spend over $600,000 in work related to the goshawk.

National Environmental Policy Act Compliance

Preliminary analysis by the Forest Service indicates a likely reduction in the amount of timber offered for harvest or under contract dung the 1 year life of this interim directive in the Region. The effects of these guidelines will be documented and disclosed to the public in compliance with the requirements of the National Environmental Policy Act (NEPA) on a case-by-case basis. Use of these guidelines, along with deviations from them, will be considered during the NEPA analyses done to implement specific projects called for in Forest Plans. These guidelines will not preclude other activities described in Forest Plans.

Northern Goshawk Interim Directive

These management guidelines issued through an interim directive in Forest Service Manual 2676.3, are in keeping with the provisions of the Forest Service Sensitive Species policy and the viable

population requirement of the National Forest Management Act implementing regulations.

Forest Service Manual

Albuquerque, New Mexico

Interim Directive No. 2670–91–1.
Effective Date: June 6, 1991.
Expiration Date: June 6, 1992.
Chapter: 2670—Threatened, Endangered, and Sensitive Plants and Animals.

Posting Notice: Last ID was No. 2, dated 6/26/90 to chapter 70.

This interim directive requires northern goshawk nest sites and post-fledging family areas be established and managed whenever a nest site is located.

David F. Jolly,

Regional Forester.

2676—Specific Direction on Individual Species

2676.3—Northern Goshawk

Concern about the habitat needs and population viability of the northern goshawk (*Accipiter gentilis*) resulted in the species being identified as "sensitive" by the Regional Forester in 1982.

1. Authority

This interim policy provides guidelines for carrying out active conservation programs to maintain viability of the northern goshawk, as directed in the implementing regulations for the National Forest Management Act, and FSM 2670.1.

2. Objectives

a. Search for goshawk nest sites in suitable northern goshawk habitat prior to management activities.

b. Identify general areas where replacement nest sites and post-fledging family areas (PFA) will be placed.

c. Provide for multiple use consistent with maintaining northern goshawk population viability.

d. Manage habitats to ensure continued existence of a well distributed northern goshawk population.

e. Specify guidelines for the management of desired habitat conditions to maintain reproductive pairs.

3. Policy

a. Conduct surveys of suitable habitat to locate northern goshawk nest sites. The location of the nest site(s) is the means of consistently identifying northern goshawk habitat.

b. Implement the Management Direction section of this interim policy wherever northern goshawk habitat has been identified by the location of known goshawk nest sites or other evidence of reproduction.

4. Responsibility

a. Regional Northern Goshawk Program Coordinator

The Regional Forester shall appoint a Regional Northern Goshawk Program Coordinator who shall:

(1) Assist Forest, District and Zone Wildlife Biologists in locating nest sites and PFA boundaries.

(2) Provide assistance to Forest and District personnel on implementation of northern goshawk management guidelines.

(3) Coordinate northern goshawk studies within the Region.

(4) Serve as chairperson on the Northern Goshawk Scientific committee and Northern Goshawk Task Force.

(5) Coordinate northern goshawk management and research with appropriate State and Federal agencies.

(6) Manage the Regional Northern Goshawk Program, providing budget and staffing advice along with data management.

(7) Provide guidance and assistance to Forests to evaluate effects of activities on the northern goshawk in biological evaluations.

b. Forest Supervisor

In addition to responsibilities listed at FSM 2670.45, Forest Supervisors shall ensure timely implementation of Regional direction concerning northern goshawk through specific procedures and actions including northern goshawk survey, monitoring, nest site and post-fledging family area selection, and identification.

(1) Review PFA and nest site boundaries submitted by the District Ranger where appropriate.

(2) Consult with Regional Northern Goshawk Program Manager on the locations of any northern goshawk PFA or nest site boundaries where there is uncertainty about where the boundary should be located.

(3) Coordinate the northern goshawk program at the Forest level with appropriate State and Federal agencies and research.

(4) Coordinate northern goshawk sites available for show-me trips with Districts.

(5) Ensure that release of information conforms with Forest Service policy identified in FSM 2671.2.

(6) Coordinate the selection of sites for monitoring with District Rangers.

(7) Review written documentation for road and trail location exemptions as appropriate.

(8) Provide guidance, assistance and quality control to ensure the biological evaluations adequately address potential adverse effects from management activities on goshawks.

(9) Review inventory and monitoring procedures used by Districts to ensure quality control and appropriateness.

c. District Ranger

In addition to responsibilities listed in FSM 2670.46, District Rangers shall:

(1) Ensure implementation of Forest Supervisor's direction, including necessary survey and monitoring, concerning northern goshawk through specific actions and procedures.

(2) Ensure all multiple-use objectives proposed within a northern goshawk PFA are consistent with northern goshawk habitat management through the Integrated Resource Management (IRM) process.

(3) Ensure that northern goshawk surveys and monitoring are conducted on their District using appropriate methodology.

(4) Locate nest sites, replacement nest sites and PFA area boundaries best meeting Regional requirements. Submit for review by the Forest Supervisor as appropriate.

(5) Locate, approve and document calling routes used during northern goshawk surveys.

(6) Identify District survey needs and assist Forest Supervisor in determining Forest priorities.

(7) Manage and conduct show-me trips as appropriate in coordination with the Forest Supervisor.

5. Definitions

Use this list of standard terms and definitions when referring to northern goshawk habitat management to reduce potential misunderstandings and provide greater consistency in the language used throughout the Region. Definitions are taken from several sources.

a. Active Nest. A nest known to have contained incubated eggs. A nest need not be successful to be considered active.

b. Adverse Management Activity. Any activity that could adversely modify goshawk habitat characteristics or adversely affect goshawk reproductive efforts.

c. Alternate Nest. Goshawk territories may contain three or more nests, only one of which will be active in a given year. Alternate nests can be in adjacent trees or as far away as 1 mine.

d. Breeding Season. That time period from March 1 through September 30

which includes courtship, nestling, and fledgling-dependency periods.

e. Clumpiness. The occurrence of trees in patches or groups generally with interlocking crowns.

f. Deferred Habitat. That portion of the PFA where management activities will not occur for some designated period of time.

g. Dominant Trees. Trees that by means of their numbers, coverage, or size, exert the greatest influence on the stand.

h. Down Logs. Fallen trees or portions of fallen trees that are at least 12" in diameter and 8 feet long.

i. Fledgling. A young hawk that has left the nest but is unable to completely care for itself. Usually identifiable by the presence of down.

j. Foraging Area. A large area used by the goshawk for hunting in order to meet their food and energy requirements.

k. Group Selection. A modification of the selection system in which trees are removed in small groups at a time.

l. Historic Site. Any reproductive site where northern goshawk were identified or observed prior to development of this directive.

m. Home Range. The entire area that an animal habitually uses for foraging, resting,watering, and so forth. Nesting home range size for goshawk pairs average about 6,000 acres. Adjacent pairs of goshawks have overlapping home ranges, they are not exclusive areas. A home range may contain one to several nest sites or alternate nests and the post-fledging family area.

n. Intermediate Treatment. The treatment (removal) of trees from a stand between the time of its formation and the regeneration cut. Removal is generally taken to include cleaning, thinning, liberation, improvement, salvage, and sanitation cuttings. Treatments other than removal are pruning, fertilization, and prescribed burning.

o. Lop and Scatter. A method to disperse logging debris by reducing limbs and tops from logging activities to a specific height (usually 2 to 3 feet) above the ground and scattered across an area.

p. Mesic. Habitats that are more moist and cooler than surrounding areas such as along drainages, base of slopes, and/or on north exposures.

q. Multi-storied Stands. Horizontal stratum (such as layers) of vegetation formed by a plant community, in forests essentially their canopy layers. The forest may have one or more such strata and hence be single-storied, two-storied, or multi-storied.

r. Nest. The slightly cupped platform of sticks in which the eggs are laid. Most nests of goshawks are placed within the lower two-thirds of tree crowns, often against the trunk but occasionally on a limb up to 10 feet from the trunk.

s. Nest Attempt. An attempt to nest as evidenced by observed courtship behavior within a nest site or new nest construction or reconstruction of an old nest (addition of new sticks or greenery).

t. Nest Site. The nest, nest tree, and area surrounding the nest that includes the stand of trees containing prey handling areas, perches, and roosts and may contain one or more alternate nests.

u. Nest Tree. The tree containing the nest.

v. Opening. In forest cover types, an area with less than 10 percent canopy coverage.

w. Plucking Post. A perch used by a goshawk to tear apart and feed on prey species. The remains of mammalian and avian prey can be located on the ground under the perch which can be a standing live tree, a snag or a fallen tree.

x. Post-fledging Family Area. An area within the goshawk home range, including nest sites, of concentrated use by the goshawk family after the young leave the nest.

y. Predator. A raptor that preys on northern goshawk or their young.

z. Protocol. Refers to a formalized methodology for monitoring and inventory.

aa. Replacement Nest Site. Sites with similar characteristics to the nest site that are potentially occupiable either now or sometime in the future and are approximately 30 acres in size.

bb. Reserve Trees. Dominant or codominant trees retained in the area in perpetuity within a goshawk foraging area. The trees are well distributed and occur in clumps of at least five trees with interlocking crowns.

cc. Seral Species. Plant species that will be replaced over time until a relatively stable forest community becomes established.

dd. Silvicultural System. A process which follows accepted silvicultural principles, whereby the tree crops are tended to produce crops of a desired form, harvested, and replaced.

ee. Single Storied Stands. Stands of trees having a single canopy layer, see multi-storied stands.

ff. Snag. A standing dead tree. Ponderosa pine and fir are at least 20" dbh and aspen at least 10" dbh.

gg. Stand. A community of trees possessing sufficient uniformity as regards composition, age, spatial arrangement, or condition to be distinguishable from adjacent communities.

hh. Successful Nest. A nest from which at least one young is fledged.

ii. Successional Stage. A stage or recognizable condition of a plant community which occurs during its development from bare ground to climax.

jj. Suitable Habitat. Habitat that is currently usable for nesting, roosting, and feeding by northern goshawk. It includes the nest sites, post-fledgling family area, and foraging area. Habitat need not be occupied to be considered suitable.

kk. Survey Area. Area around the proposed management activity in which a northern goshawk survey or inventory will be conducted.

ll. Territory. Any defended area (such as an exclusive area). An active nest is not an essential element of a territory, pairs defend nest sites before and during nest construction and sometimes will continue to defend after failure.

mm. Unsuitable Habitat. Habitat that is not occupied by northern goshawk, and does not have the capability of attaining the characteristics of suitable habitat at any time in the future through standard, prescribed management treatments or natural processes.

nn. Vegetation Structural Stage. Describes the forest successional stage, canopy coverage, and stories.

6. Survey and Inventory

a. Each Forest modify, develop and/or identify the protocol used this field season.

b. Inventory suitable habitat for projects meeting the adverse management activity definition. Use the following approach:

(1) Use existing survey data for all sales already under contract and sales with signed decision notices.

(2) Determine the level of survey needed to prepare a biological evaluation for FY 1991 sales in IRM phases 1 through 9 and accomplish this level.

(3) Complete at least 1 year of survey for sales to be sold in FY 1992.

7. Establishing Goshawk Management Areas

The District, Zone, or Forest Biologist/Wildlife Staff establish nest site and PFA boundaries. Use the following information to establish nest sites and PFA's. Refer to the definitions where appropriate.

a. Nest Sites. Suitable nest sites are critical in the reproductive biology of goshawks. They contain the nest tree and may contain alternate nest trees. Nest sites are occupied during the breeding season which generally begins

in early March and ends by late September. Nest sites are frequently used more than 1 year. Alternate nest sites are often used intermittently for decades.

Nest sites are a forest stand (average of 30 acres) that contains the nest(s), the structural features of the vegetation (for example tree density, canopy closure) and landform (for example slope, aspect) within the area used by a pair of goshawks during the nesting season until the young fledge. Goshawk nest sites have a relatively high canopy closure and high density of large trees (see exhibit 1).

Establish a nest site, using best professional judgment, within the identified suitable habitat which incorporates the known nest tree. Plot the location of all nest site(s) and alternate nest sites identified on U.S.G.S. 2.65" Quad Maps.

Identify replacement nest sites based on professional judgment. Design and locate to ensure future nest site needs in the home range. Located in mesic areas or other area that reflect the landform attributes of existing nest sites.

b. Post-fledging Family Area (PFA). The PFA corresponds to a defended territory based on radio telemetry studies. Designation of the PFA is a management attempt to approximate the biological territory. It represents an area of concentrated use by the goshawk family after the young leave the nest and until they are no longer dependent on the adults for food. The PFA provides the young hawks with the necessary hiding cover from both nocturnal and diurnal predators and sufficient prey populations to develop hunting skills.

The desired stand conditions for PFA's include moderately closed overstory and understory canopies for hiding cover and habitat elements critical in the life-histories of the prey species such as large snags, nest-trees, large down logs, and food resources. The intent is to develop a management prescription for each PFA so that over time about 50 percent of the PFA is maintained in mature forest (18" dbh +) with scattered small openings.

Because the PFA is considerably larger (up to 600 acres in size) than nest sites, PFA's may include a mosaic of forest conditions. The PFA surrounds the nest tree(s), nest site(s), alternate and replacement nest sites.

Establish a PFA whenever a nest site is located. Location and shape of the PFA are at the discretion of the District, Zone, or Forest Biologist but must be based on habitat conditions and professional judgment. Where possible make PFA boundaries consistent with stand boundaries. Prior to establishing a PFA around a historical site, conduct surveys and inventories necessary to determine occupancy and habitat condition in the vicinity of historical nests. If a historical site is unoccupied but suitable habitat remains, a PFA may be established if there is evidence of recent (about the last 10 to 15 years) reproductive activity. If the site is unoccupied and little or no suitable habitat remains, establishment of a PFA is not required at this time.

The nest sites may take on several spatial distributions based on the current location of nests and topography with regards to suitable goshawk nesting habitat. The distribution of nest sites and replacement nest sites may all be centrally located within the PFA or take on a more linear distribution if sites are located within pine stringers or drainage/canyon situations. Once the nest sites and replacement nest sites (totaling 180 acres) have been established, the configuration of the 420 acres in the PFA should be considered. Though the PFA need not necessarily be circular in its delineation, an adequate buffer for all of the nest sites and replacement nest sites must be provided. The PFA provides particular or specialized needs to the goshawk family, as well as, buffering nesting activities from project disturbances occurring within the foraging areas.

Exclude areas to be managed as permanent openings within the PFA where possible and appropriate. Permanent openings (for example meadows, rocky outcrops, roads) should not be included in the PFA acreage. Increase the 600 acres needed in the PFA by the amount of acres in permanent openings.

c. Foraging Areas. The northern goshawk is a predator of larger birds and mammals. Goshawks must hunt for their prey over large areas in order to meet their food and energy requirements. These hunting or foraging areas average about 6,000 acres in size, including the PFA. The intent is to manage these areas to provide quality habitat for goshawk prey species.

8. Monitoring

Use systematic protocol to monitor goshawk activities.

9. Management Direction

Apply this management direction to all management activities proposed in suitable habitat. Include all activities that meet the adverse management activities definition in item 5.b.

a. Nest sites and replacement nest sites.

(1) Manage a total of six nest sites (3 suitable and 3 replacement) within a PFA. If no activities are scheduled to occur in the PFA this year, then it may not be necessary to delineate replacement nest sites.

(2) Maintain all known nest sites within the PFA. If fewer than three are known, designate potentially acceptable nest sites based on suitable habitat, stand structure, and topography.

(3) Manage for future development of up to three replacement nest sites.

(4) Designate approximately 30 acres for each nest site and replacement nest site. Nest sites are to be in a mature forest condition (see exhibit 1 for suggested guidelines).

(5) Cluster replacement nest sites in the center of the PFA. Locate within an approximate 0.5 mile radius.

(6) Allow no adverse management activities (see 5.b.) in active nest sites during the breeding season. Use an appropriate survey or monitoring method to determine goshawk activity.

(7) Allow approved activities in inactive nest sites after June 30. Use an appropriate monitoring method to determine goshawk inactivity.

b. Post-fledging family area.

(1) Establish a minimum of a 600-acre PFA around all known goshawk nest sites in the Region including ones located in planned and sold sales. Include alternate nest sites and replacement nest sites for a pair within the PFA.

(2) Establish a PFA for all nests located during sale administration or other activities in sold or planned sales.

(3) A PFA may be established when there is strong evidence that reproductive activity is occurring but no nest has been located. Consider a combination of factors such as the number of sightings, time of year of the sightings, courtship behavior, presence of juvenile birds, presence of plucking posts, and territorial behavior when evaluating the need to establish a PFA where no nest is known. Provide written documentation for establishment.

(4) Guide the exact location and shape of the PFA by the existing landscape, taking into account the biological needs of the goshawk. Include the known nests sites and replacement nest sites. Place the PFA so known or replacement nest sites are generally centered in the PFA, whenever possible and biologically appropriate.

(5) Manage the PFA over the long term in a manner so that approximately 10 percent of the area is in small openings of ⅓ to ¼ acre at any one time. Consider an opening to be forested vegetation types with less than 10 percent canopy coverage. Do not consider permanent openings (such as

meadows) as part of the 600-acre PFA. Use the group-selection silvicultural system with openings of ¼ acre in ponderosa pine and ⅓ acre in mixed conifer and spruce fir whenever possible.

(6) Sales under contract and FY 1991 sales in IRM phases 1 through 9 may implement thinnings from below (intermediate treatment) only if they are determined to meet the intent (as determined by a wildlife biologist and silviculturist) of PFA management. Specific guidelines will be issued at a later date on how intermediate treatments will be used to meet desired future stand conditions. The intent is to reduce the number of changes to existing or planned sales without having adverse effects on goshawks.

(7) Use lop and scatter to dispose of slash whenever possible.

(8) Allow no adverse management activities (see 5.b.) in PFA's with active nest sites during the breeding season. Use an appropriate survey or monitoring method to determine goshawk activity.

(9) Allow approved activities in PFA's with inactive nest sites after June 30. Use an appropriate monitoring method to determine goshawk inactivity.

(10) Within the PFA allow new road construction only if no other routes are reasonably available. If routes are selected that go through a PFA, written approval by the Forest Supervisor is required.

(11) Allow new trail constuction no closer than ¼ mile from nest sites except when no other routes are reasonably available. If routes are selected that are closer, written approval by the Forest Supervisor is required.

(12) If it is not legally (valid existing rights) possible to restrict adverse activities from occurring in the PFA, seek cooperation from those conducting the activity. If necessary restrict the season of use to outside the breeding season. Keep ground disturbing activities to the minimum necessary to accomplish the objective for entering the PFA.

c. Foraging area. No specific Region-wide guidelines for management of the foraging area (6,000 acres minus 600 acres is the foreaging area) are provided in this directive.

d. Incorporation of non-National Forest System (NFS) lands for 1991 planning:

(1) When the nest sites are located on NFS lands, place the PFA on NFS lands.

(2) When the nest site is located on private land, establish the PFA on a biological basis regardless of land ownership. Where appropriate, additional land may be protected on NFS lands.

e. Include northern goshawk habitat that meets Forest Plan old-growth requirements in the Forest old-growth allocation when it is appropriate and desirable to do so.

f. Where northern goshawk home ranges outside of PFA's overlap with Mexican spotted owl territories, implement spotted owl guidelines. Where PFA's overlap with Mexican spotted owl territories, implement management of PFA's according to these guidelines.

10. Biological Evaluation.

Use the biological evaluation process (FSM 2672.4) to evaluate the effects of all Forest Service programs and activities on the northern goshawk when they occur in suitable habitat. Include all known past, current, and proposed activities when analyzing cumulative effects. Use the biological evaluation process to determine possible needs for additional timing restraints or other mitigation measures not addressed by this interim directive.

11. Show-me Trips.

Show-me trips are not recommended, however they may benefit northern goshawk management by increasing awareness of the species and its habitat. It is important to manage and coordinate show-me trips to minimize disturbance and avoid possible adverse impacts to goshawks. Consolidate show-me trips to minimize the number of trips taken and incorporate with other inventory or monitoring activities whenever possible. Encourage the media to utilize existing footage and/or photographs in order to reduce show-me trips. Other considerations for show-me trip management include the number of visits per site and other activities at/near the site.

2676.3—EXHIBIT 1—MINIMUM STRUCTURAL ATTRIBUTES FOR SUITABLE GOSHAWK NEST SITES (HABITAT)*

Forest cover type, name	Pinyon-juniper	Cotton-wood-willow	Interior ponderosa pine		Mixed-species		Aspen	Engelmann spruce-subalpine fir
Forest cover type, SAF code	239	235	237		209, 210, 211, 216, 219		217	206
Site capability potential break	N.A.	N.A.	Ponderosa pine 55		Douglas-fir 50		N.A.	N.A.
Potential			Low	High	Low	High		
1. Live Trees in Main Canopy:								
Trees/Acre	60–100	(1)	40	30	45	35	20	35
DBH/DRC	12"	(1)	16"	22"	15"	20"	16"	20"
Age (years)	200+	(1)	200+	200+	200+	200+	80+	150+
2. Total BA, Square Feet/Acre	60	(1)	120	140	110	130	50	140
3. Total Canopy Cover, Percent	60	(1)	50	60	50	60	60	70
4. Vegetation Structural Stages	4B–5	(1)	4B–5	4B–5	4B–5	4B–5	4A–5	4B–5

[1] Historically this forest cover type was used as nesting habitat only rarely.

Forest Cover Type—A descriptive classification of forestland based on present occupancy of an area by tree species (Eyre 1980). Forest cover types are named after predominant tree species. Predominance is determined by basal area and the name is confined to one (ponderosa pine and aspen) or two species (pinyon-juniper, cottonwood-willow, and Engelmann spruce-corkbark fir). The mixed-species conifer forest cover type per se is not a forest cover type but includes several cover types. Mixed-species includes the bristlecone pine, interior Douglas-fir, white fir, blue spruce, and limber pine forest cover types. Most often mixed-species stands have a rich tree species diversity, including three or four different species, sometimes more.

Site Capability Potential—The capability of the soil or site to produce biomass (trees). Soil capability is determined by measuring the age and height of several dominant and codominant good growing trees and comparing the measurements with the appropriate site index table. This procedure is commonly referred to as determining the site index. The ponderosa pine site curves (Minor 1964) are used for the ponderosa pine forest cover type and Douglas-fir site index curves (Edminster and Jump, 1976) are used to determine site capability for the mixed-species. The break number indicates the separation between low and high site capability potential.

The structural attributes are the minimum requirements for suitable goshawk nest sites. The attributes are intended to permit inventory by individual forest cover types. The attributes are defined and measured as follows:

1. Live Trees—Trees with some or many visible living, green leaves or needles that are present some time during a year.

Main Canopy—The largest tree (overstory trees) in a stand that are more or less the continuous cover of branches and foliage formed collectively by the crowns of adjacent trees.

Trees per Acre—An average number of trees in a stand on a per acre basis.

DBH—(Diameter Breast Height) The outside bark diameter of a timber species tree measured at breast height. Breast height is 4.5 feet above the forest floor on the uphill side of the tree (USFS 1989).

DRC—(Diameter Root Crown) The outside bark diameter of a woodland tree measured slightly (2 inches) above the break between root collar and the normal-taper of the stem. Root collar is the region where root and stem merge. If the tree is multistemmed, the EDRC (equivalent diameter root crown) is calculated and the tree represents one tree.

Age—The mean age of the large live trees (main canopy) in the stand. Age is measured in years by boring a tree at DBH (timber species) or DRC (woodland, other tree species).

2. Total BA—(Basal Area) The cross section area of a tree or trees in a stand, generally expressed as square feet per acre (USFS 1989). Basal area is the cross section at DBH or DRC.

3. Total Canopy Cover—The percentage of a fixed area (stand) covered by the crowns delimited by the vertical projection of the outermost perimeter of the natural spread of the foliage for all live trees; small openings in the crown are included (USFS 1989).

4. Vegetation Structural Stages—A method of describing a stand of live trees that considers tree size, number of trees, and crown canopy cover.

* This table may change as a result of the Scientific Committee final report and will be updated at that time.

Dated: June 18, 1991.

David F. Jolly,

Regional Forester.

[FR Doc. 91–15029 Filed 6–24–91; 8:45 am]

BILLING CODE 3400–11–M

Soil Conservation Service

Powell Creek Watershed Plan Supplement, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Powell Creek Watershed Plan Supplement, Marengo and Hale Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, Telephone (205) 887–4536.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This project concerns a plan for watershed protection and flood prevention to reduce erosion problems and flood damages.

The plan supplement includes the installation of three floodwater retarding structures and relocation of two others that were previously planned. Approximately 14.5 miles of stream channelization are deleted from the plan. Flood protection will be provided to 8,570 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under (10,904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials).

Dated: June 10, 1991.

Ernest V. Todd,

State Consesrvationist.

[FR Doc. 91–15031 Filed 6–24–91; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration.

Form Number(s): 7525–V–Alternate.

Alternate Approval Number: 0607–0152.

Type of Request: Prompt review—Revision to the Reporting Requirements for the Shipper's Export Declaration.

Burden: 529,700 hours.

Number of Respondents: 100,000.

Avg Hours Per Response: 1 hour for exporters subject to this new requirement.

Needs and Uses: The Forest Resources Conservation and Shortage Relief Act of 1990 requires that the Department of Commerce, in conjunction with the Departments of Agriculture and Interior, conduct a two-year study beginning 1/1/90 of exports from the United States of unprocessed hardwoods harvested from Federal or public lands east of the 100th meridian. The Act also requires exporters to declare on Shipper's Export Declarations (SEDs) the State in which this timber was grown and harvested. This submission requests prompt review from OMB to modify instructions for completing SEDs.

Affected Public: Individuals or households; farms; businesses or other for-profit organizations; non-profit institutions; and small businesses or organizations.

Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 20, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-07-M

U.S. DEPARTMENT OF COMMERCE — BUREAU OF THE CENSUS — INTERNATIONAL TRADE ADMINISTRATION

FORM **7525-V-ALT.(Intermodal)** (1-1-88)

SHIPPER'S EXPORT DECLARATION

CONFIDENTIAL — For use solely for official purposes authorized by the Secretary of Commerce (13 U.S.C. 301(g)).

OMB No. 0607-0152

DO NOT USE THIS AREA

2. EXPORTER *(Principal or seller-licensee and address including ZIP Code)*

ZIP CODE

5. DOCUMENT NUMBER

5a. B/L OR AWB NUMBER

6. EXPORT REFERENCES

AUTHENTICATION *(When required)*

29. THE UNDERSIGNED HEREBY AUTHORIZES

TO ACT AS FORWARDING AGENT FOR EXPORT CONTROL AND CUSTOMS PURPOSES.

EXPORTER

(BY DULY AUTHORIZED OFFICER OR EMPLOYEE)

3. CONSIGNED TO

7. FORWARDING AGENT *(Name and address — references)*

8. POINT (STATE) OF ORIGIN OR FTZ NUMBER

30. METHOD OF TRANSPORTATION *(Mark one)*

☐ Vessel ☐ Other — *Specify*

☐ Air

4. NOTIFY PARTY/INTERMEDIATE CONSIGNEE *(Name and address)*

9. DOMESTIC ROUTING/EXPORT INSTRUCTIONS

31. ULTIMATE CONSIGNEE *(Give name and address if this party is not shown in item 3.)*

32. DATE OF EXPORTATION *(Not required for vessel shipments)*

33. COUNTRY OF ULTIMATE DESTINATION

34. EXPORTER'S EIN (IRS) NUMBER

35. PARTIES TO TRANSACTION

☐ Related ☐ Non-related

12. PRE-CARRIAGE BY

13. PLACE OF RECEIPT BY PRE-CARRIER

14. EXPORTING CARRIER

15. PORT OF LOADING/EXPORT

10. LOADING PIER/TERMINAL

16. FOREIGN PORT OF UNLOADING *(Vessel and air only)*

17. PLACE OF DELIVERY BY ON-CARRIER

11. TYPE OF MOVE

11a. CONTAINERIZED *(Vessel only)*

☐ Yes ☐ No

Export shipments are subject to inspection by U.S. Customs Service and/or the Office of Export Enforcement.

MARKS AND NUMBERS (18)	NUMBER OF PACKAGES (19)	DESCRIPTION OF COMMODITIES *in Schedule B detail* (20)	GROSS WEIGHT *(Kilos)* (21)	MEASUREMENT (22)	D OR F (23)

CD — Check digit
Value — Selling price or cost if not sold (U.S. dollars, omit cents)
Quantity — Schedule B unit(s) (Nearest whole unit)

24. SCHEDULE B NO. | CD

25a. QUANTITY 1 | **25b.** QUANTITY 2

26. VALUE

24. SCHEDULE B NO. | CD

25a. QUANTITY 1 | **25b.** QUANTITY 2

26. VALUE

24. SCHEDULE B NO. | CD

25a. QUANTITY 1 | **25b.** QUANTITY 2

26. VALUE

27. VALIDATED LICENSE NO./GENERAL LICENSE SYMBOL

28. ECCN *(When required)*

36. I certify that all statements made and all information contained herein are true and correct and that I have read and understand the instructions for preparation of this document, set forth in the **"Correct Way to Fill Out the Shipper's Export Declaration."** I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information, or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; and 50 U.S.C. App. 2410).

(Signature) (Title) (Date)

This form must be privately printed. Sample copies may be obtained from the Bureau of the Census, Washington, D.C. 20233, and local Customs District Directors. The **"Correct Way to Fill Out the Shipper's Export Declaration"** is available from the Bureau of the Census, Washington, D.C. 20233

[FR Doc. 91–15084 Filed 6–24–91; 8:45 am]

Foreign-Trade Zones Board

[Docket 35-91]

Foreign-Trade Zone 123—Denver, CO; Application for Subzone, Storage Technology Corporation Information Storage Equipment Plant Boulder County, CO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, grantee of FTZ 123, requesting special-purpose subzone status for the information storage equipment manufacturing facilities of Storage Technology Corporation (StorageTek) located in Boulder County, Colorado, some 25 miles northwest of Denver. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 12, 1991.

StoregeTek is an international producer of large capacity electronic data storage and retrieval systems, impact printers and related data management software. It has plants in the U.S. and the U.K., and annual sales of $1 billion.

The proposed subzone would include the company's Boulder County, Colorado, production and distribution operations (5,000 employees): Site 1 (360 acres)—2270 South 88th St., Louisville; Site 2 (153 acres)—2345 Clover Basin Drive, Longmont; Site 3 (58,000 sq. ft.)—1351 S. Sunset Street, Longmont; Site 4 (92,000 sq. ft.)—520 Burbank Street, Broomfield.

StorageTek's Colorado facilities are used to manufacture large capacity electronic information storage and retrieval subsystems for data processing applications involving reel and cartridge tape devices, automatic cartridge library systems, solid-state disk subsystems, cached and non-cached disk control units, rotating magnetic disk subsystems, impact printers, and associated software. Some 10 percent of its components are sourced abroad, including hard and floppy disk drive units, table and rack mounted storage devices, printed circuit assemblies, high capacity output units, laser printers, power supplies, and related ADP parts and accessories, as well as electric motors, generators, transformers, capacitors, resistors, switches, photosensitive semiconductor devices, bearings, wire and cable, lenses, measuring instruments, air and vacuum pumps, and certain articles of rubber and ceramic. Currently, 40 percent of the finished products are exported.

Zone procedures would exempt StorageTek from Customs duty payments on the foreign components used in equipment produced for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (0.0–4.2 percent). The duty rates on most components range from 0.0 to 16.0 percent. The application indicates that zone savings will help improve StorageTek's international competitiveness and increase export sales.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald W. Myhra, District Director, U.S. Customs Service, North Central Region, 300 Second Avenue South, Great Falls, Montana 59401; and Colonel Stewart Bornhoft, District Engineer, U.S. Army Engineer District Omaha, 25 North 17th Street, Omaha, Nebraska 68102–4978.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 9, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, suite 600, 1625 Broadway, Denver, CO 80202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: June 18, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-15078 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-05-M

[Docket 34-91]

Foreign-Trade Zone 136—Brevard County, FL; Application for Subzone, American Digital Switching Telecommunications and Computer Products Plant, Melbourne, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, grantee of Foreign-Trade Zone 136, requesting subzone status for the telecommunications and computer products manufacturing and repair facility of American Digital Switching, Inc. (ADS), in Melbourne, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 11, 1991.

The ADS plant (5.08 acres, 27 employees) is located at 4255 Dow Road, Melbourne, Brevard County, Florida. The facility, established in 1989, is used to manufacture central office digital switches for telephone systems and custom-made personal computers. It is also used to repair and refurbish computers, printed boards, and related products. Certain components for the switches are sourced abroad, such as printed circuit boards, cables, frames, and transistors. Components for the assembly of the personal computers that are sourced from abroad include printed circuit boards, disk drives, monitors, keyboards, and power supplies. The repair operation uses a wide range of merchandise sourced from abroad, including the items listed above as well as microprocessor and memory integrated circuits, transformers, fans, oscillators, and other electronic components. Some of the products are re-exported.

Zone procedures would exempt ADS from Customs duty payments on foreign items used in manufacturing and repair operations for export. On manufacturing and repair operations for the domestic market, the company would be able to choose the duty rates for finished computers (3.9%) and printed circuit boards (5.3%). The duty rate for telephone system switches is 8.5 percent. Components have duty rates ranging from 0.0 to 5.3 percent. The application indicates that the zone savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director for Inspection and Control, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, FL 33131; and Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232-0019.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive

Secretary at the address below and postmarked on or before August 9, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Customs Service, Port Director's Office, 120 George King Blvd., P.O. Box 513, Cape Canaveral, Florida 32920.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 17, 1991.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 91-15079 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-557-701]

Carbon Steel Wire Rod from Malaysia; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) has terminated the administrative review requested on the countervailing duty order on carbon steel wire rod from Malaysia, initiated on May 21, 1991, for the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On April 25, 1991, Armco, Inc., Georgetown Steel Corp., and Raritan River Steel Co., petitioners in this case, requested a countervailing duty administrative review of the order on carbon steel wire rod from Malaysia for the period January 1, 1990 through December 31, 1990. No other interested parties requested reviews. On May 21, 1991, the Department initiated the administrative review for that period (56 FR 23271).

On May 10, 1991, the petitioners withdrew their request for review. As a result, the Department has determined to terminate the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: June 18, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-15077 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-504]

Carbon Steel Wire Rod From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 16, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from New Zealand. We have now completed that review and determine that there were no shipments of the subject merchandise to the United States during the period January 1, 1987 through September 30, 1987. However, because of program-wide changes resulting in the termination of two programs found countervailable in the final determination, we are changing the cash deposit of estimated countervailing duties to zero.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 33750) the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from New Zealand (51 FR 7971; March 7, 1986). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments from New Zealand of coiled, semi-finished, hot-rolled carbon steel wire rod of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the review period, such merchandise was classifiable under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200 and 607.2300 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under items 7213.31.30, 7213.31.60, 7213,39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through September 30, 1987, one known manufacturer/exporter of this merchandise, Pacific Steel Limited, and 14 programs:

A. Export Performance Taxation Incentive (EPTI);
B. Export Market Development Taxation Incentive (EMDTI);
C. Sales Tax Exemptions or Refunds on Imported Capital Equipment and Machinery (STERICEM);
D. Crown Loans;
E. Technical Assistance from the Building Research Association of New Zealand;
F. Export Marketing Assistance from the Department of Trade and Industry;
G. Preferential Treatment of Exporters in Granting Import Licenses;
H. Research and Development Incentives;
I. Export Credits and Development Financing from the Development Finance Corporation;
J. Export Suspensory Loan Scheme;
K. Export Programme Suspensory Loan Scheme;
L. Export Marketing Assistance from the New Zealand Export-Import Corporation;
M. Technical Assistance from the Standards Association of New Zealand; and
N. Technical Help to Exporters.

There were no shipments of the subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, Pacific Steel Limited (PSL), and the petitioners, Atlantic Steel Company, Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company.

Comment 1: PSL argues that the Department should adjust the cash deposit rate on all future entries of the the subject merchandise because of the

Government of New Zealand's (GNZ) termination of the EPTI program. PSL further argues that in Steel Wire from New Zealand; Preliminary Results of Countervailing Duty Administrative Review (53 FR 28428; July 28, 1988) and Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review (54 FR 19590; May 8, 1989), the Department confirmed that the GNZ had terminated this program. PSL argues that, unlike an antidumping duty administrative review where the absence of sales provides no means of determining whether the margin of dumping has actually changed, the absence of entries or exports during the review period is not a valid reason for declining to revise the cash deposit rate in a countervailing duty administrative review. The Department knows that, with or without sales, the EPTI program is not available to any New Zealand exporters.

Petitioners, on the other hand, urge the Department to terminate the current administrative review and to maintain the cash deposit rate at its current level of 25.69 percent *ad valorem*. Citing 19 CFR 355.22, *PQ Corp* v. *United States*, 652 F. Supp. (CIT 1987), Carbon Steel Wire Rod from Argentina, 54 FR 49322 (1989) (antidumping review), and Certain In-Shell Pistachio Nuts from Iran, (rejection or request to initiate countervailing duty administrative review), peitioners contend that neither section 751(a) nor section 751(b) of the Tariff Act authorizes the Department to conduct an administrative review of a countervailing duty order in the absence of actual entries, sales, imports, or exports. Specifically petitioners contend that the Department must examine actual entries to determine: (1) Whether the program has been terminated with respect to PSL, (2) whether the allegedly terminated program confers residual benefits upon PSL, and (3) whether PSL has received benefits from any new programs. Petitioners distinguish Steel Wire from New Zealand and Lamb Meat from New Zealand by emphasizing that at least one of the respondents subject to those reviews had entries that the Department could review.

Department's Position: Section 751(a) of the Tariff Act authorizes the Department, in the absence of any entries, shipments, or exports, to conduct an administrative review of a countervailing duty order to adjust the cash deposit rate when a foreign government has instituted a program-wide change (*e.g.*, elimination or creation of a program). This conclusion follows from the statutory language of section 751(a) which provides in relevant part that "[a]t least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order * * * [the Department], if a request for such a review has been received * * *, shall * * * review and determine the amount of any net subsidy * * * and shall publish the results of such review, together with notice of any duty to be assessed, *estimated duty to be deposited*, or investigation to be resumed in the **Federal Register**." 19 U.S.C. 1675(a) (emphasis added).

A program-wide change, such as the government's elimination of a program, necessarily can trigger a review pursuant to section 751(a) even in the absence of entries, shipments, or exports, because such an event may result in a change to "the amount of any net subsidy". 19 U.S.C. 1675(a)(1)(A). Furthermore, the express language of the statute demonstrates that a section 751(a) administrative review has several purposes, one of which is to adjust any "estimated duty to be deposited."

In an investigation that preceded the preliminary results of this review, the Department confirmed that the GNZ had eliminated two programs—EPTI and STERICEM—found to confer countervailable benefits during the period of investigation in this proceeding. See Certain Steel Wire Nails from New Zealand; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (52 FR 37196; October 5, 1987). Because the GNZ's elimination of these government programs has reduced "the amount of the net subsidy" found in the final determination to a *de minimis* level of 0.02 percent *ad valorem* for the subject merchandise, and because section 751(a) authorizes the Department to conduct a review for the limited purpose of adjusting the cash deposit rate even in the absence of any entries, shipments, or exports, we are revising our preliminary results. Specifically, we are reducing the cash deposit rate to zero for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

We disagree with petitioners' contention that the Department must examine actual entries or exports of the subject merchandise to determine whether PSL is receiving any residual benefits from the terminated programs or any benefits from any new subsidy programs for purposes of adjusting the cash deposit rate. Because we have established that the EPTI and STERICEM programs were terminated in 1987 and 1986, respectively, and because the benefits bestowed by these programs were of a type that conferred immediate benefits and were expensed in the year of receipt, there is no basis to assume that any residual benefits remain. Furthermore petitioners' reliance upon 19 CFR 355.22 for the proposition that the Department does not possess the legal authority to conduct a countervailing duty administrative review in the absence of entries or exports is misplaced. Petitioners ignore the express language of § 355.22(b)(1) which provides in relevant part that "an administrative review * * * *normally* will cover entries or exports of the merchandise * * *." (emphasis added). This language does not preclude the Department from conducting a countervailing duty administrative review in the absence of entries in all cases. As explained above, the Department is still able to calculate "the amount of any net subsidy" in the absence of entries when a foreign government institutes a program-wide change. See, e.g., Certain Electrical Conductor Aluminum Redraw Rod from Venezuela; Final Results of Countervailing Duty Administrative Review, (56 FR 14232; April 8, 1991) (where Department conducted a review and changed the cash deposit rate as a result of a program-wide change despite no entries or exports).

Petitioners' reliance upon Pistachio Nuts from Iran is similarly misplaced, because the Department was not confronted with the elimination of any government programs or any other program-wide change in that case. The Department declined to conduct a countervailing duty administrative review in the absence of entries in Pistachio Nuts because the review would have had absolutely no effect upon "the amount of any net subsidy."

In contrast to Pistachio Nuts the subject administrative review involves a program-wide change (i.e., elimination of a government program) that has resulted in a change to "the amount of any net subsidy". Therefore, the Department correctly conducted the subject review and adjusted the cash deposit even though there were no entries during the review period. See, e.g., Aluminum Redraw Rod from Venezuela, supra; but see, e.g., Wool From Argentina; Final Results of Countervailing Duty Administrative Review, (56 FR 21661: May 10, 1991) (where Department did not change the cash deposit rate because there were no entries and no program–wide changes).

Finally, in citing PQ Corp and Carbon Steel Wire Rod from Argentina, two antidumping cases, petitioners miss the

essential distinction between antidumping and countervailing duty administrative reviews. An antidumping review necessarily requires that actual entries, sales, or shipments be made during the review period, so that the Department can determine whether a respondent has increased its U.S. prices relative to its home market prices. In order words, the dumping calculation itself is tied to, or contingent upon, an entry or sale of the subject merchandise.

A countervailing duty administrative review, by contrast, does not necessarily require that actual entries or exports be made during the review period to allow the Department to calculate "the amount of any net subsidy." As explained above, the Department is able to calculate the net subsidy in the absence of entries or exports when a foreign government has undertaken a program–wide change, such as the elimination of a subsidy program.

Thus, the calculation of the net subsidy under these circumstances is not tied to, or contingent upon, an entry or exportation of the subject merchandise; rather, the calculation is dependent upon the Department's examination of the statutes, decrees, or regulations that have eliminated the government program. Therefore, the Department's practice with respect to the initiation of antidumping reviews in the absence of entries or sales does not govern the initiation of countervailing duty reviews under identical circumstances.

Comment 2: Petitioners contend that, if the Department adjusts the cash deposit rate in this administrative review, the Department would be promulgating a "new rule of general applicability" in violation of the Administrative Procedure Act (the APA) (5 U.S.C. 553), because the Department failed to provide petitioners with adequate notice of, and an opportunity to comment upon, its change in practice.

Department's Position: Our determination with respect to the cash deposit issue falls outside the purview of the APA for two reasons. First, contrary to petitioners' assertions, this determination does not constitute a "new rule of general applicability." Rather, our determination with respect to the cash deposit issue represents a continuation of our administrative practice. See, e.g., Aluminum Redraw Rod From Venezuela, supra.

Second, even if our determination were considered a "rule" within the meaning of the APA, such a "rule" would necessarily be an interpretative rule—that is, an interpretation of section 751(a) of the Tariff Act. See *Timken Co.* v. *U.S.*, 673 F. Supp. 495, 514 (CIT 1987) (*quoting Gibson Wine Co.* v. *Snyder*, 194 F.2d 329, 331 (D.C. Cir. 1952) ("Interpretative rules are 'statements as to what the administrative officer thinks the statute or regulation means.' "). It is well settled that interpretative rules fall within an exception to the rulemaking requirements of APA. See *id.*; 5 U.S.C. 553(b)(3)(A). Therefore, our determination in this reveiw—in particular, our decision to change the cash deposit rate despite the absence of entries—was not subject to the notice and comment requirements of the APA.

Comment 3: Petitioners allege that in March 1986, prior to the review period, the GNZ provided an equity infusion on terms inconsistent with commercial considerations to New Zealand Steel (NZS) by assuming NZ $1.14 billion of NZS's debt in exchange for 81 percent of NZS's stock. Petitioners further allege that subsequent to the review period, in October 1987, the GNZ sold its NZS stock to another holding company, Equiticorp, for less than NZ $300 million and, thereby, conferred a domestic subsidy upon NZS. Petitioners then allege that NZS passed this subsidy onto PSL by selling steel billets, the main input used in the production of carbon steel wire rod, to PSL at subsidized prices. For these reasons, petitioners urge the Department to initiate an upstream subsidy investigation with respect to the production of steel billets.

PSL contends, by contrast, that petitioners failed to provide the Department with "reasonable grounds to believe or suspect" that NZS provided an upstream subsidy to PSL. Therefore, the Department correctly declined to initiate an upstream subsidy investigation in this administrative review. Specifically, PSL contends that NZS and PSL were not related during the review period, and that the petitioners failed to demonstrate that transactions between NZS and PSL were not at arm's length, that steel billets were not available at comparable prices from other sources during the review period, or that NZS undercut the prices charged by other suppliers of billets during that period.

Department's Position: Section 701(c) of the Tariff Act sets forth the legal standard that governs the initiation of an upstream subsidy investigation:

> Whenever the [Department] has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1671(a)(1) of this title *[i.e.*, domestic subsidy], is being paid or bestowed, [the Department] shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1671(a)(3) of this title.

19 U.S.C. 1671(c) (emphasis added).

Congress has explained that this "reasonable grounds to believe or suspect" standard is extremely rigorous. Compare H.R. Rep. No. 98–725, 98th Cong., 2d Sess. 80 (1984) with 130 Cong. Rec. H11,577 (daily ed. Oct. 5, 1984) and H.R. Rep. No. 98–1156, 98th Cong., 2d. Sess. 171 (1984); see also 130 Cong. Rec. S13,970 (daily ed.) (Oct. 9, 1984) (explanation by Senator Dole). Furethermore, the U.S. Court of International Trade (CIT) has ruled that the "reasonable grounds to believe or suspect" standard in the context of a cost-of-production investigation in an antidumping proceeding requires a petitioner to set forth "*specific* and *objective*" evidence in its allegation to trigger a cost-of-production investigation. *Al Tech Specialty Steel Corp.* v. *United States*, 575 F. Supp. 1277, 1282 (CIT 1983), *aff'd on other grounds*, 745 F.2d 632 (Fed. Cir. 1984) (emphasis supplied in original).

In this administrative review, petitioners' upstream subsidy allegation failed to provide the Department with "reasonable grounds to believe or suspect" that the GNZ conferred an upstream subsidy upon the manufacture or production of steel billets. Specifically, petitioners failed to provide sufficient evidence demonstrating that the GNZ's initial assumption of NZS's debt and subsequent sale of NZS's stock to Equiticorp constitute a countervailable domestic subsidy. As conceded by petitioners, "[w]e have been unable to obtain sufficient evidence regarding whether a market price existed for the stock of NZS following the GNZ's acquisition, and whether the GNZ's per-share acquisition price was above the market price." Petitioners' Submission at 4 (June 9, 1988).

In fact, petitioners themselves merely speculate that the transactions at issue might constitute a countervailable domestic subsidy. See Petitioners' Submission at 7 (June 9, 1988) ("[T]he original debt assumption may constitute a 'traditional' equity infustion, while the subsequent sale of shares to Equiticorp may be viewed as a 'bargain' sale conferring a subsidy on NZS) (emphasis added). Significantly, the petitioners acknowledge that the evidence upon which their allegation is based is unreliable: "Information on the transactions described herein was derived from publically-available periodicals and newswires. These publications contained certain

discrepancies and inconsistencies." Petitioners' Submission at 2, n.1 (June 9, 1988) (emphasis supplied). For these reasons, the Department correctly declined to initiate an upstream subsidy investigation in the subject administrative review.

Comment 4: Petitioners contend that NZS is subject to the outstanding countervailing duty order covering the subject merchandise, because NZS failed to make a timely request during the initial investigation pursuant to 19 CFR 355.38 (1988) to warrant an exclusion from the outstanding order. DOC Position: We disagree. In Carbon Steel Wire Rod from New Zealand; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (51 FR 7971; March 7, 1986), the Department determined that NZS received *de minimis* countervailable benefits. Therefore, the Department correctly excluded NZS from the countervailing duty order. Because petitioners failed to contest the Department's exclusion of NZS from the order within 30 days from the date of publication of the order, petitioners are barred from raising this challenge in this administrative review. See 19 U.S.C. 1516a.

Moreover, petitioners' reliance upon 19 CFR 355.38 (1988) is misplaced, because this regulation, contrary to the interpretation advanced by petitioners, provides a mechanism pursuant to which a foreign exporter that is neither a respondent named in the petition nor a respondent subject to the investigation can be excluded from a potential countervailing duty order. This regulation does not govern a participating respondent that has demonstrated to the satisfaction of the Department that it received *de minimis* benefits during the period of investigation.

Final Results of Review

As a result of our review, we determine that there were no shipments of the subject merchandise during the period January 1, 1987 through September 30, 1987. After considering all of the comments received, we determine that program-wide changes have eliminated the benefit from two programs, reducing the benefit to 0.02 percent *ad valorem*.

In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Accordingly, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 17, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-15076 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

Carbon Steel Wire Rod From Saudi Arabia; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has conducted administrative reviews of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We preliminarily determine the total bounty or grant to be 0.13 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. We also preliminarily determine the total bounty or grant to be 0.49 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1989 and February 9, 1990, the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (54 FR 5102 and 55 FR 4646) of the countervailing duty order on carbon steel wire rod from Saudi Arabia. During February 1989 and February 1990, Georgetown Steel Corporation, Northstar Steel Texas, Inc., Raritan River Steel Company and Atlantic Steel Company, petitioners in this proceeding, and the Saudi iron and Steel Company (HADEED), the respondent, requested administrative reviews covering the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989. We initiated the reviews on April 6, 1989 (54 FR 13913) and March 22, 1990 (55 FR 10642), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the 1988 review period, such merchandise was classifiable under item numbers 607.1400, 607.1710, 607.1720, 607.1730, 607.2200 and 607.2300 of the Tariff Schedules of the United States Annonated (TSUSA). During the 1989 review period, such merchandise was classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7313.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and eight programs. During the review period, there was only one Saudi producer and/or exporter of the subject merchandise, the Saudi Iron and Steel Company (HADEED).

Analysis of Programs

(1) Public Investment Fund Loan to HADEED

The Public Investment Fund (PIF) was established in 1971 as one of five specialized credit institutions set up by the Government of Saudi Arabia. The other specialized credit institutions are the Saudi Industrial Development Fund (SIDF), the Saudi Agricultural Bank, the Saudi Credit Bank and the Real Estate Development Fund. These specialized credit institutions are funded completely by the Saudi government and were the

only sources of long-term financing in Saudi Arabia during the review period.

The PIF was established in 1971 to provide financing to large-scale, commercially productive projects that have some equity participation of the Saudi government. PIF by-laws exclude firms or projects without Saudi government equity from applying to the PIF for financing. From 1973 through the end of the review period, the PIF has provided loans to 18 firms. Of these, 12 (including HADEED) are at least 50 percent-owned by the Saudi Basic Industries Corporation (SABIC). Of the remaining six borrowers, three are 50 percent-owned by PETROMIN, and three are unrelated: Saudia Airlines, a utility company and a real estate investment fund. Firms receiving PIF financing represent less than one-half of all large scale firms, and only a very small portion of all industrial enterprisess, in the Kingdom.

Because the application of the government equity participation requirement limited benefits under this program to a small number of enterprises, we therefore preliminarily determine that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to HADEED is countervailable to the extent that it is given on terms inconsistent with commercial considerations.

The loan contract between the PIF and HADEED requires that HADEED pay a variable commission, or interest, on the outstanding balance based on its profitability in a given fiscal year. During 1988 and 1989, HADEED made repayments of loan principal and commission on its PIF loan.

Using the two sources for medium- to long-term industrial financing available in Saudi Arabia, private commercial banks and the SIDF, we have constructed composite interest rate benchmarks for each review period to determine whether the PIF loan to HADEED was on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of HADEED's total project costs, for our benchmark we assumed that HADEED could have financed 50 percent of its total project costs with a SIDF loan (the maximum eligibility for a company with at least 50 percent Saudi ownership) and the remaining 10 percent of project costs with a Saudi commercial bank loan. The SIDF loan portion of the benchmark was used because, of all the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, thus, is most representative of what HADEED would otherwise have to pay for long-term loans in Saudi Arabia. We used the 1.9 percent flat rate of interest applied to SIDF loans through 1988 and 1989. The commercial bank portion of the benchmark was based on the average Jeddah Interbank Offering Rate (JIBOR) for 1988 and 1989, plus a one percent spread. Because the composite benchmarks for 1988 and 1989 are less than the actual commission, or interest rates, that HADEED paid on its PIF loan in 1988 and 1989, we preliminary determine that the PIF loan was not preferential for the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989.

(2) SABIC's Transfer of SULB Shares to HADEED

SABIC was established in 1976 by the Government of Saudi Arabia as an industrial development corporation. SABIC has been the majority shareholder in HADEED since the steel company's inception in 1979. In 1982, SABIC acquired all of the remaining shares in the Steel Rolling Company (SULB), a Saudi producer of steel reinforcing bars of which SABIC had been the majority shareholder since 1979. In December 1982, SABIC decided to transfer its shares in SULB to HADEED in return for new HADEED stock. Through the stock transfer, SULB became a wholly-owned subsidiary of HADEED.

In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, (51 FR 4206; February 3, 1986), we determined that HADEED was unequityworthy in December 1982 and that the transfer of SABIC's shares in SULB to HADEED in exchange for additional shares in HADEED was inconsistent with commercial considerations.

To determine the benefit to HADEED from the acquisition of SULB, we used our rate of return shortfall methodology. We determined the amount of the equity infusion to be the net book value of SULB's equity at the time of the transfer. As best information available on the national average rate of return on equity in Saudi Arabia, we used the 1988 and 1989 annual average rates of return on U.S. direct investment in Saudi Arabia. Based on the most recent data available from the U.S. Commerce Department's Bureau of Economic Analysis, the 1988 and 1989 average rates of return on equity were 23.85 percent and 16.13 percent, respectively. We computed the rate of return shortfall by taking the difference between this figure and the 1988 and 1989 rates of return on equity in HADEED. Because HADEED's rates of return on equity in 1988 and 1989 were greater than average rates of return on U.S. direct investment in Saudi Arabia in 1988 and 1989, respectively, the rate of return shortfall for each review period is zero. On this basis, we preliminarily determine the benefit from this equity infusion to be zero for the period January 1, 1988 through December 31, 1988, and zero for the period January 1, 1989 through December 31, 1989.

(3) Preferential Provision of Equipment to HADEED

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for HADEED two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to HADEED's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Commission transferred custody to HADEED under a lease/purchase agreement.

As originally planned, the bulk ship unloader and conveyor system was built to serve both HADEED and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving HADEED as the sole user of this equipment. The terms of the lease/purchase agreement require that HADEED must repay the equipment and construction costs plus a two-percent fee for the cost of money in 20 annual installments. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

In the *Saudi Wire Rod* (*op. cit.*), we found that the two-percent cost-of-money fee is the Commission's standard charge for recovery of costs on other facilities in the Jubail Industrial Estate. Of the projects examined, a urea berthside handling system built for the exclusive use of another company located in the Estate was the most comparable to HADEED ship unloader and conveyor system. Therefore, we compared the repayment schedule for HADEED's ship unloader and conveyor system to the repayment schedule for a berthside handling system. Although both agreements carried the standard cost-of-money fee, we found that HADEED's end-loaded, stepped repayment schedule was more advantageous than the annuity-style repayment schedule on the berthside handling system. Therefore, we determine that HADEED's ship unloader and conveyor system was provided on preferential terms. Moreover, because

the equipment is used exclusively by HADEED, we find that it is provided to a specific enterprise and, thus, confers a bounty or grant.

To calculate the benefit, we compare the principal and fees being paid in each year by HADEED to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two-percent discount rate. The resulting benefits for 1988 and 1989 were then divided by the value of HADEED's sales during 1988 and 1989, respectively. On this basis, we preliminarily determine the benefit from the preferential provision of the unloader and conveyor system to be 0.01 percent *ad valorem* for the period January 1, 1988 through December 31, 1988, and 0.01 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

(4) Income Tax Holiday for Saudi Joint Venture Projects

Under Article 7 of the Foreign Capital Investment Code of January 1, 1979, a 10-year income tax holiday may be granted for economic development projects. The following three conditions must be fulfilled to obtain approval by the Saudi Foreign Investment Committee: (1) Saudi participation is not less than 25 percent of total capital; (2) the foreign capital shall be invested in nontraditional development projects which, for the purposes of the Foreign Capital Investment Code, do not include petroleum related and/or mineral extraction projects; and (3) the investment shall be accompanied by foreign technical know-how and expertise. This tax holiday applies only to income taxes that are owed by the foreign share of the enterprise.

Because the application of these three requirements limited benefits under this program to a small number of enterprises, we therefore determine that it is specific and countervailable. In tax returns filed in 1988 and 1989, HADEED reported profits for fiscal 1987 and 1988, respectively. Thus, DEG, HADEED's foreign partner, would have been liable for income tax during the review periods had it not still been eligible for the income tax holiday.

To calculate the benefit from the tax holiday, we divided the amount of tax DEG would have paid in 1988 and 1989 absent the tax holiday by HADEED's total sales for 1988 and 1989, respectively. On this basis, we preliminarily determine the bounty or grant from the income tax holiday to be 0.12 percent *ad valorem* for the period January 1, 1988 through December 31, 1988, and 0.48 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

(5) Other Programs

We also examined the following programs and preliminarily determine that HADEED did not benefit from them during the 1988 and 1989 review periods:

1. SABIC loan guarantees;
2. Preferential provision of services by SABIC;
3. Government procurement preferences; and
4. Issuance of preferential government bonds.

Preliminary Results of Review

As a result of the review, we preliminarily determine the total bounty or grant to be 0.13 percent *ad valorem* for the period January 1, 1988 through December 31, 1988, and 0.49 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1988 and exported on or before December 31, 1989.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Traffic Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request dislosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

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 355.22.

Dated: June 20, 1991.

Eric I. Garfinkel

Assistant Secretary for Import Administration.

[FR Doc. 91-15075 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

June 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 351/651 is being increased by application of special shift, decreasing the limit for Categories 341/641 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 46238, published on November 2, 1990; and 56 FR 8748, published on March 1, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1990, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1990 and extends through September 30, 1991.

Effective on June 27, 1991, you are directed to amend further the directive dated October 29, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Adjusted twelve-month limit [1]
341/641	273,887 dozen.
351/651	149,520 dozen.

[1] The limits have not been adjusted to account for any imports exported after September 30, 1990.

For the import period October 1, 1990 through February 27, 1991, you are directed to charge 52,991 dozen to Category 351 for the current restraint period. There are no charges for Category 651 for the October 1, 1990 through February 27, 1991 import period.

Also, you are directed to deduct 35,087 dozen from the charges made to Categories 351/651 for the period October 1, 1990 through September 30, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-15086 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-DR-F

List of Exempt Traditional Folklore Textile Products from Pakistan

June 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs replacing the existing list of traditional folklore textile products.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, the Governments of the United States and Pakistan, reached agreement, effected by exchange of letters dated May 23 and 28, 1991, to replace the existing list of exempt traditional folklore textile products. A list of the newly agreed items is published as an enclosure to the letter to the Commissioner of Customs.

See **Federal Register** notices 48 FR 25257, published on June 6, 1983; and 52 FR 21611, published on June 8, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended, establishes export visa and exempt certification requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on June 27, 1991, you are directed to substitute the enclosed list of "Pakistan Items" for the existing list of Pakistan folklore textile products. "Pakistan items" are exempt from the limits of the bilateral agreement with Pakistan when properly certified by the Government of Pakistan prior to exportation.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Pakistan Folklore Items

"Pakistan Items" are those items that are uniquely and historically traditional Pakistani products. They are limited to the products enumerated below.

1. *Shisha Embroidered Dress:* A dress which is knee length or longer with at least the front area above the waist covered with an overlay. The overlay contains embroidery and mirrors which are attached to the overlay by embroidery. This dress has a partial back opening fastened by hooks, buttons, or snaps, but not by zippers or velcro.
   - The mirrors and embroidery must cover the front area above the waist, however, there are no restraints on other sections being covered by mirrors and embroidery.
2. *Kurta:* A pullover tunic which is fingertip or knee length with a partial opening in front which may be fastened by hooks, buttons, or snaps, but not by zippers or velcro. The tunic may be collarless or have a stand-up collar, but may not have an out-turned shirt-type collar or out-turned shirt-type cuffs. A Kurta has no front pockets, but may have side-slit pocket(s), and must have sleeves that are a quarter length or longer. The fabric of the Kurta may be solid colored, striped, printed, crocheted, embroidered and/or patchworked with side slits of at least 2 inches on both sides.
3. *Gharara:* Pants/trousers with a drawstring waist with colored and/or metallic embroidery work. Each pant leg measures at least 36 inches across the bottom and closes at the ankle by a drawstring.
   - Imported as a set with the Kurta.
4. *Multani Choli:* A tight fitting collarless top which is waist length or shorter and that has quarter or half length sleeves. The Multani Choli has a full front or back opening fastened by snaps, buttons, or hooks, but not by a zipper or velcro. This top may or may not be embroidered.
5. *Burqa:* A solid colored, loose fitting, and untapered gown which is ankle length with a full front opening from neck to ankle, fastened by snaps, buttons, or hooks, but not by a zipper or velcro. A head covering is imported with the Burqa which may or may not be attached to the gown.
6. *Baluchi/Peshawari Vest:* A sleeveless and loose fitting vest which may close with snaps, buttons, or hooks, but not by a zipper or velcro. The Baluchi/Peshawari vest extends to approximately waist length and is covered by substantial embroidery and mirrors which are at least on the front.
7. *Ghagra:* An extremely loose fitting, full, ankle length skirt which gathers at the waist by either a drawstring or hooks, but not by a zipper or velcro. The circumference of the skirt at the bottom is at least 5 yards.
8. *Batwa:* A drawstring pouch or string bag as described below:

Pakistan Folklore Items—Continued

a. Drawstring Pouch—A small pouch which is no more than 7 inches across when laid flat and is covered at least on one side with sequins, metallic string and other decorative material. A drawstring is used to close the opening.

b. String Bag—A small bag which is no more than 7 inches across and 6 inches in height when laid flat. The bag is covered with embroidery and mirrors at least on the front flap and is held by a twisted yarn shoulder strap.

9. *Sindi Julaba:* A loose fitting, ankle length dress, with or without a partial closure in the front or back fastened by snaps, buttons, or hooks, but not by a zipper or velcro. The dress may have side slits or side pockets and must have half length sleeves.
10. *Izarband:* A non-woven (knit) narrow fabric with two braided ends which results in loose fringe at both ends used as a drawstring.
11. *Baluchi Kameez:* A loose fitting tunic with an opening on one shoulder seam fastened by hooks, buttons, or snaps, but not by a zipper or velcro. The tunic has 3/4 length sleeves or longer and has matching embroidery work at least on the yoke and cuffs. The tunic is always longer than waist length, flares out near the bottom, and does not have side slits.
12. *Kaftan:* A women's loose fitting pullover full or ankle length garment with partial front or back opening fastened by hooks, buttons, snaps or string but not by a zipper or velcro. The fabric of the kaftan may be solid colored, striped, printed, crocheted, embroidered and/or patchworked. The kaftan has side slits or a back slit for walking.
13. *Ghilaf:* A cushion cover which is oblong, square, round, or of other shapes, covered with a combination of mirrors, embroidery, and other decorative material.
14. *Dupatta:* A scarf which is at least two meters or more in length and one meter or more in width. The scarf must be hemmed at both ends and constructed from thin, lightweight fabric.
15. *Shalwar:* Straight (men) or gathered (women) pants with a drawstring waist and either drawstring leg openings (no elastic) or cuffs. The men's shalwar has less stitching on the bottom of each leg than the women's shalwar.
16. *Pyjama:* Men's or women's pants without a waistband, but with a drawstring waist. The pant leg may either be straight or tapered with or without a small side slit. The garment may have pockets but has no front opening.
17. *Punjabi Kameez:* A loose fitting tunic with an out-turned collar and shirt type cuffs and a partial front opening fastened by hooks, buttons, or snaps, but not by a zipper or velcro. A tunic has side slits at least 2 inches or more on both sides. It has front pockets and side slit pockets. The fabric of Punjami Kameez is solid colored, striped, printed, embroidered or patchworked.

[FR Doc. 91-15087 Filed 6-24-91; 8:45 am]
BILLING CODE 3510-DR-F

Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States: Changes to the 1991 Correlation

June 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes to the 1991 Correlation.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202)377-3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1991) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The following list includes some Harmonized Tariff Schedule numbers that will be published in the first supplement to the Harmonized Tariff Schedule of the United States (1991). The Correlation should be amended to reflect the changes indicated below:

Category	Changes to the 1991 Correlation
229	Delete 5608.19.2000.
	Add 5608.19.2030—definition remains unchanged.
339	Delete 6104.29.2046.
	Add 6104.29.2049—definition remains unchanged.
341	Delete 6204.29.4046.
	Add 6204.29.4070—definition remains unchanged.
345	Delete 6104.29.2056.
	Add 6104.29.2065—definition remains unchanged.
347	Delete 6113.00.0035.
	Add 6113.00.0038—modify definition to include "trousers, breeches and shorts."
	Delete 6210.40.2030.
	Add 6210.40.2035—modify definition to include "trousers, breeches and shorts."
348	Delete 6113.00.0040.
	Add 6113.00.0042—modify definition to include "trousers, breeches and shorts."
	Delete 6210.50.2030.
	Add 6210.50.2035—modify definition to include "trousers, breeches and shorts."
359	Delete 6104.29.2074.
	Add 6104.29.2081—definition remains unchanged.
	Delete 6113.00.0075.
	Add 6113.00.0074—definition remains unchanged.
	Delete 6113.00.0080.
	Add 6113.00.0082—definition remains unchanged.
	Delete 6204.29.4058.
	Add 6204.29.4082—definition remains unchanged.
	Delete 6210.40.2050.
	Add 6210.40.2055—definition remains unchanged.
	Delete 6210.50.2050.
	Add 6210.50.2055—definition remains unchanged.
432	Add 6115.93.1010—socks of synthetic fibers, containing lace or net, containing 23 percent or more by weight of wool or fine animal hair
	Add 6115.93.2010—socks, of synthetic fiber, other than containing lace or net, containing 23 percent or more by weight of wool or fine animal hair.
	Add 6115.99.1410—socks of artificial fibers, containing lace or net, containing 23 percent or more by weight of wool or fine animal hair.
	Add 6115.99.1810—socks, of artificial fibers, other than containing lace or net, containing 23 percent or more by weight of wool or fine animal hair.
435	Delete 6117.90.0034.
	Add 6117.90.0033—modify definition to include "fine animal hair."
438	Delete 6104.29.2048.
	Add 6104.29.2051—definition remains unchanged.
	Delete 6117.90.0024.
	Add 6117.90.0023—modify definition to include "fine animal hair."
440	Delete 6204.29.4048.
	Add 6204.29.4072—definition remains unchanged.
446	Delete 6104.29.2058.
	Add 6104.29.2067—definition remains unchanged.
	Delete 6117.90.0012.
	Add 6117.90.0013—modify definition to include "fine animal hair."
448	Delete 6117.90.0044.
	Add 6117.90.0043—modify definition to include "fine animal hair."
459	Delete 6104.29.2076.
	Add 6104.29.2083—definition remains unchanged.
	Add 6114.30.3042—men's and boys' coveralls, jumpsuits and similar apparel, knitted or crocheted, containing 23 percent or more by weight of wool or fine animal hair.
	Add 6114.30.3052—women's or girls' coveralls, jumpsuits and similar apparel, knitted or crocheted, containing 23 percent or more by weight of wool or fine animal hair.
	Delete 6117.20.0020.
	Add 6117.20.0019—modify definition to include "fine animal hair."
	Delete 6117.80.0020.
	Add 6117.80.0019—modify definition to include "fine animal hair."
	Delete 6117.90.0054.
	Add 6117.90.0055—modify definition to include "fine animal hair."
	Delete 6204.29.4060.
	Add 6204.29.4084—definition remains unchanged.
	Delete 6208.29.0010.
	Add 6208.29.0012—modify definition to include "fine animal hair."
	Add 6505.90.9045—hats and other headgear, knitted or crocheted, other than of MMF, other than containing 70 percent or more by weight of silk or silk waste, of fine animal hair.
604	Delete 5509.41.0000.
	Add 5509.41.0010—single yarn, containing 85 percent or more by weight of synthetic staple fibers, of polyvinyl alcohol (PVA) fibers.
	Add 5509.41.0090—single yarn, containing 85 percent or more by weight of synthetic staple fibers, other than of polyvinyl alcohol (PVA) fibers.
	Delete 5509.42.0000.

Category	Changes to the 1991 Correlation
	Add 5509.42.0010—multiple (folded) or cabled yarn, containing 85 percent or more by weight of synthetic staple fibers, of polyvinyl alcohol (PVA) fibers.
	Add 5509.42.0090—multiple (folded) or cabled yarn, containing 85 percent or more by weight of synthetic staple fibers, other than of polyvinyl alcohol (PVA) fibers.
632.....	Delete 6115.93.1000.
	Add 6115.93.1020—socks containing lace or net, of synthetic fibers, other than containing 23 percent or more by weight of wool or fine animal hair.
	Delete 6115.93.2000.
	Add 6115.93.2020—socks of synthetic fiber, other than containing lace or net, other than containing 23 percent or more by weight of wool or fine animal hair.
	Delete 6115.99.1400.
	Add 6115.99.1420—socks of other textile materials, of artificial fibers, other than containing 23 percent or more by weight of wool or fine animal hair.
	Delete 6115.99.1800.
	Add 6115.99.1820—socks, of other textile materials, of artificial fibers, other than containing lace or net, other than containing 23 percent or more by weight of wool or fine animal hair.
639.....	Delete 6104.29.2050.
	Add 6104.29.2055—definition remains unchanged.
641.....	Delete 6204.29.4050.
	Add 6204.29.4074—definition remains unchanged.
646.....	Delete 6104.29.2060.
	Add 6104.29.2069—definition remains unchanged.
647.....	Delete 6113.00.0045.
	Add 6113.00.0044—modify definition to include "trousers, breeches and shorts."
	Delete 6210.40.1030.
	Add 6210.40.1035—modify definition to include "trousers, breeches and shorts."
648.....	Delete 6113.00.0050.
	Add 6113.00.0052—modify definition to include "trousers, breeches and shorts."
	Delete 6210.50.1030.
	Add 6210.50.1035—modify definition to include "trousers, breeches and shorts."
659	Delete 6104.29.2078.
	Add 6104.29.2085—definition remains unchanged.
	Delete 6113.00.0085.
	Add 6113.00.0084—definition remains unchanged.
	Delete 6113.00.0090.
	Add 6113.00.0086—definition remains unchanged.
	Delete 6114.30.3040.
	Add 6114.30.3044—men's and boys' coveralls, jumpsuits and similar apparel, knitted or crocheted, of man-made fibers.
	Delete 6114.30.3050.
	Add 6114.30.3054—women's or girls' coveralls, jumpsuits and similar apparel, knitted or crocheted, of man-made fibers.
	Delete 6204.29.4062.
	Add 6204.29.4086—definition remains unchanged.
	Delete 6210.40.1050.
	Add 6210.40.1055—definition remains unchanged.
	Delete 6210.50.1050.
	Add 6210.50.1055—definition remains unchanged.
835.....	Delete 6117.90.0040.
	Add 6117.90.0041—definition remains unchanged.
838.....	Delete 6104.29.2053.
	Add 6104.29.2061—definition remains unchanged.
	Delete 6104.29.2054.
	Add 6104.29.2063—definition remains unchanged.
	Delete 6117.90.0030.
	Add 6117.90.0031—definition remains unchanged.
840.....	Delete 6204.29.4054.
	Add 6204.29.4078—definition remains unchanged.
	Delete 6204.29.4056.
	Add 6204.29.4080—definition remains unchanged.
845.....	Delete 6104.29.2070.
	Add 6104.29.2077—definition remains unchanged.
	Delete 6104.29.2072.
	Add 6104.29.2079—definition remains unchanged.
	Delete 6117.90.0020.
	Add 6117.90.0021—definition remains unchanged.
846.....	Delete 6104.29.2068.
	Add 6104.29.2075—definition remains unchanged.
	Delete 6104.29.2064.
	Add 6104.29.2073—definition remains unchanged.
847.....	Delete 6103.29.2042.
	Add 6103.29.2044—men's or boys' trousers and breeches of other textile materials, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6103.29.2048—men's or boys' shorts of other textile materials, other than containing 70 percent or more by weight of silk or silk waste.
	Delete 6103.49.3018.
	Add 6103.49.3017—men's or boys' trousers and breeches of other textile materials, of silk, other than of 70 percent or more by weight of silk or silk waste.
	Add 6103.49.3019—men's or boys' shorts of other textile materials, of silk, other than of 70 percent or more by weight of silk or silk waste.
	Delete 6103.49.3020.
	Add 6103.49.3024—men's or boys' trousers and breeches of other textile materials, other than of artificial materials, other than of silk.
	Add 6103.49.3026—men's or boys' shorts, of other textile materials, other than of artificial materials, other than of silk.
	Delete 6104.29.2042.
	Add 6104.29.2041—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6104.29.2043—women's or girls' shorts, of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Delete 6104.29.2044.
	Add 6104.29.2045—women's or girls' trousers and breeches, of other textile materials, other than of artificial fibers, other than of silk.
	Add 6104.29.2047—women's or girls' shorts, of other textile materials, other than of artificial fibers, other than of silk.
	Delete 6104.69.3030.
	Add 6104.69.3034—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6104.69.3036—women's or girls' shorts of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Delete 6104.69.3032.
	Add 6104.69.3038—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, other than of silk.
	Add 6104.69.3040—women's or girls' shorts of other textile materials, other than of artificial fibers, other than of silk.
	Delete 6117.90.0050.
	Add 6117.90.0051—definition remains unchanged.
	Delete 6203.29.3040.
	Add 6203.29.3046—men's or boys' trousers and breeches, of other textile materials, other than of artificial fibers, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6203.29.3048—men's or boys' shorts, of other textile materials, other than of artificial fibers, other than containing 70 percent or more by weight of silk or silk waste.
	Delete 6204.29.4042.
	Add 6204.29.4041—women's or girls' trousers and breeches of other textile materials, other than of synthetic fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6204.29.4043—women's or girls' shorts of other textile materials, other than of synthetic fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Delete 6204.29.4044.
	Add 6204.29.4047—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, other than of silk.
	Add 6204.29.4049—women's or girls' shorts of other textile materials, other than artificial fibers, other than of silk.
	Delete 6204.69.3050.
	Add 6204.69.3052—women's or girls' trousers and breeches of other textile materials, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6204.69.3054—women's or girls' shorts of other textile materials, other than containing 70 percent or more by weight of silk or silk waste.
	Delete 6204.69.9040.
	Add 6204.69.9044—women's or girls' trousers and breeches of other textile materials, other than of silk or silk waste.
	Add 6204.69.9046—women's or girls' shorts of other textile materials, other than of silk or silk waste.
851.....	Delete 6208.29.0030.
	Add 6208.29.0031—definition remains unchanged.
858.....	Delete 6117.20.0060.

Category	Changes to the 1991 Correlation
	Add 6117.20.0070—definition remains unchanged.
859.....	Delete 6104.29.2082.
	Add 6104.29.2087—definition remains unchanged.
	Delete 6117.80.0060.
	Add 6117.80.0070—definition remains unchanged.
	Delete 6117.90.0060.
	Add 6117.90.0061—definition remains unchanged.
	Delete 6204.29.4066.
	Add 6204.29.4090—definition remains unchanged.
	Delete 6204.29.4068.
	Add 6204.29.4092—definition remains unchanged.
	Delete 6505.90.9060.
	Add 6505.90.9090—Hats and other headgear, knitted or crocheted, other than of MMF, other than of fine animal hair.
899.....	Delete 6303.99.0020.
	Add 6303.99.0060—definition remains unchanged.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–15088 Filed 6–24–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for Visit Authorization, OMB Number 0704–0221.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 12 minutes.

Responses Per Respondent: 714.

Number of Respondents: 84.

Annual Burden Hours: 11,995.

Annual Responses: 59,976.

Needs and Uses: This information is collected to ascertain the persons who are visiting, and the place, time, and purpose of the visit. The information is used to coordinate the visit with the place to be visited and the release of information to satisfy the visit purpose.

Affected Public: Foreign embassies in the United States, International organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15053 Filed 6–24–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Base Closure and Realignment Commission; Meetings

ACTION: Announcement of public deliberation meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Additional open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, and at the specific meeting locations shown: As previously published in the **Federal Register**, June 17, 1991, public meetings have been scheduled on June 28, 29 and 30, 9:30 a.m., Washington, DC to conduct deliberations on base closures and realignments; this announcement should be amended to include an additional day of public meetings on June 27, 1991, 9:30 a.m. and to delete the public meeting scheduled for June 29, 1991. The public meeting scheduled for June 27, 1991 will be held in room 2167 Rayburn House Office Building, Washington, DC and the public meetings scheduled for June 28 and 30 will be held in room 1100 Longworth House Office Building, Washington, DC.

Less than 15 days notice is being given in some instances due to the difficulties in confirming appropriate locations in the Washington, DC area to accommodate large public hearings.

FOR FURTHER INFORMATION CONTACT: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, (202) 653–0823.

Dated: June 21, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15168 Filed 6–21–91; 11:55 am]

BILLING CODE 3810–01–M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: July 26, 1991, 9 a.m. to 4:30 p.m. and July 27, 1991, 9 a.m. to 3 p.m..

ADDRESSES: July 26, The Pentagon, room 3E869, Washington, DC; July 27, Embassy Suites Hotel, Adams Morgan Room, 1402 Eads Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, Telephone: 703–325–0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the

DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, academic achievement encouragement, minority options in college recruitment, education of handicapped dependents, communications throughout the system, increased parental involvement, and responses to the recommendations made by the Council during its January meeting.

Dated: June 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15050 Filed 6–24–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of chapter 101, title 10, United States Code (10 U.S.C. 2006 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Lashonda Winston at (703) 696–6336 by July 12, 1991. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 17, 1991, 9:30 a.m. to 1 p.m.

ADDRESSES: Room 1E801 #7.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Dated: June 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15049 Filed 6–24–91; 8:45 am]

BILLING CODE 3810–01–M

Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1464 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to (1) attend the DoD Retirement Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Lashonda Winston at (703) 696–6336 by July 12, 1991. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 16, 1991, 1 p.m. to 5 p.m.

ADDRESSES: Room 1E801 #7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Dated: June 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15048 Filed 6–24–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the Defense Intelligence Agency Performance Review Committee.

SUMMARY: This notice announces the appointment of the Performance Review Committee (PRC) of the Defense Intelligence Agency (DIA). The PRC's jurisdication includes the entire Defense Intelligence Executive Service (DISES). Publication of the PRC membership is required by 10 U.S.C. 1501(a)(4).

The PRC provides fair and impartial review of DISES performance appraisals and makes recommendations regarding performance awards to the Director, DIA. Additionally, the PRC makes recommendations on DISES recertification to the Director, DIA.

EFFECTIVE DATE: July 1, 1991.

PRIMARY MEMBERS: Mr. Dennis M. Nagy, Executive Director (Chairman), Mr. Walter P. Lang, Defense Intelligence Officer for Middle East and South Asia, Mr. Michael F. Munson, Deputy Director for Resources, Mr. Charles W. Roades, Vice Deputy Director for Attaches and Operations, Mr. Steven T. Schanzer, Deputy Director for Information Systems, Maj Gen Richard E. Carr, USAF, Deputy Director for Foreign Intelligence.

ALTERNATE MEMBERS: Mr. A. Denis Clift, Deputy Director for External Affairs, Mr. Joseph J. Romano, Vice Deputy Director for Foreign Intelligence, Brig Gen Walter C. Hersman, USAF, Deputy Director for Command Support and Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Human Resources Manager, Policy and Program Division, Directorate for Human Resources, Defense Intelligence Agency (RHR–5), 3100 Clarendon Boulevard, Arlington, VA 22201–5322, 703–284–1341.

Dated: June 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15052 Filed 6–24–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 25, 1991.

ADDRESSES: Written coments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 19, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: The Chapter 1 Implementation Study School Survey.
Frequency: One time.
Affected Public: State or local governments.

Reporting Burden

Responses: 4,000.
Burden Hours: 2,500.

Recordkeeping Burden

Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will provide descriptive information about program operations at the school level in the third year of implementation of the Hawkins-Stafford Amendments. The Department will use the information to evaluate the effectiveness of chapter 1 programs, the educators carrying out chapter 1 or similar programs, and evaluators and program managers charged with monitoring and improving the program's operations.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Application for Grants under the National Diffusion Network Program.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.

Reporting Burden

Responses: 50.
Burden Hours: 1,200.

Recordkeeping Burden

Recordkeepers: 113.
Burden Hours: 1,356.
Abstract: This form will be used by State Educational Agencies (SEAs), state or local governments and non-profit institutions to apply for funding under the National Diffusion Network Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: A Study of Satisfactory Progress Rules and the Grades of Students.
Frequency: One time.
Affected Public: Non-profit Institutions.

Reporting Burden

Responses: 225.
Burden Hours: 225.

Recordkeeping Burden

Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will collect data from postsecondary institutions regarding the legislative definition of satisfactory academic progress required for Federal Student Aid. The Department will use this data for program assessment and to report to Congress.

[FR Doc. 91-15014 Filed 6-24-91; 8:45 am]
BILLING CODE 4000-01-M

Office of Postsecondary Education

College Work-Study—Community Service Learning Program

AGENCY: Department of Education.

ACTION: Notice of Closing date for filing the campus-based reallocation form to receive supplemental allocations for the College Work-Study—Community Service Learning (CWS–CSL) program.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for supplemental 1992–92 allocations under the CWS–CSL program. The Secretary is authorized under section 442(e) of the Higher Education Act of 1965, as amended (HEA), to reallocate unexpended College Work-Study (CWS) funds that institutions received for expenditures during the 1990–91 award year (July 1, 1990 through June 30, 1991) as supplemental allocations for the 1991–92 award year (July 1, 1991 through June 30, 1992). Supplemental allocations will be issued this fall in accordance with reallocation procedures contained in 34 CFR 675.3 and 675.4.

Section 442(e)(2) of the HEA requires the Secretary to use an amount not in excess of 25 percent of those CWS funds available for reallocation each year to issue supplemental CWS–CSL allocations to eligible institutions for the purpose of initiating, improving and expanding programs of community service learning. CWS–CSL supplemental allocations may be used only for administrative expenses related to the development of work-study programs involving the employment of CWS-eligible students in community service learning activities.

The CWS-CSL program is authorized by section 447 of title IV of the HEA. (42 U.S.C. 2756a).

Closing Date: An instititution must apply for 1991–92 supplemental allocations for the CWS–CSL program by submitting the completed data cells on the Campus-Based Reallocation Form (ED Form E40–4P; OMB No. 1840–0559).

To ensure consideration for the 1991–92 funds, the Campus-Based Reallocation Form must be mailed or hand-delivered by July 26, 1991.

Campus-Based Reallocation Forms Delivered by Mail: A Campus-Based Reallocation Form that is delivered by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Division of Programs Operations and Systems, Campus-Based Programs Branch, 400 Maryland Avenue, SW., (room 4621, Regional Office Building 3), Washington, DC 20202–5452.

An institution must show proof of mailing consisting of one of the following: (1) A legible mail with the date of mailing stamped by the U.S. Postal Service; (2) a legibly dated U.S. Postal Service postmark; (3) A dated shipping label invoice; or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Campus-Based Reallocation Forms Delivered by Hand: A Campus-Based Reallocation Form that is delivered by hand must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 7th and D Streets, SW., room 4621, Regional Office Building 3, Washington, DC. Hand-delivered Campus-Based Reallocation Forms will be accepted between 8 a.m. and 4:30 p.m. (Washington, DC. time) daily, except Saturdays, Sundays and Federal holidays. A Campus-Based Reallocation Form that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Campus-Based Reallocation Form and Information Package: Campus-Based Reallocation Forms and a CWS–CSL program information package will be mailed to all participating institutions by the Campus-Based Programs Branch in June. Each institution applying for 1991–92 supplemental allocations must submit the form in accordance with the instructions included in the package.

The CWS–CSL program information package is intended to aid applicants in applying for assistance under the CWS–CSL program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantees performance requirements beyond those specifically imposed under the statute and regulations governing the program.

Applicable Regulations: Applicable regulations are 34 CFR part 675 (College Work-Study and Job Location and Development Programs), 34 CFR part 668 (Student Assistance General Provisions), 34 CFR part 82 (New Restrictions on Lobbying), 34 CFR part 85 (Government-Wide Debarement and Suspension (Nonprocurement and Government-Wide Requirements for Drug-Free Workplace (Grants)), and 34 CFR part 86 (Drug-Free Schools and Campuses).

FOR FURTHER INFORMATION CONTACT: For further information or to request a Campus-Based Reallocation Form, contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4621, ROB–3), Washington, DC 20202–5452. Telephone (202) 708–7741. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–377–8339. (In the Washington, DC 202 area code, telephone 708–9300 between a.m. and p.m., Eastern time.)

Progam Authority: 42 U.S.C. Sections 2751–2756a.

(Catalog of Federal Domestic Assistance No. 84.033, College Work-Study Program)

Dated: June 17, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Educations.

[FR Doc. 91–15013 Filed 6–24–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91–25–NG]

Cascade Natural Gas Corp.; Order Granting Blanket Authorization to Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Cascade Natural Gas Corporation to import up to 56 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery after June 18, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–15044 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–28–NG]

Energy Marketing Exchange, Inc.; Application to Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 8, 1991, of an application filed by Energy Marketing Exchange, Inc. (EME), requesting blanket authorization to export up to 73.1 Bcf of natural gas to Canada and up to 73.1 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. EME intends to use existing U.S. pipeline facilities which are interconnected with Canadian and Mexican pipeline facilities at various points on the U.S./Canadian and U.S./Mexican borders. EME states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, July 25, 1991.

ADDRESSES: Office of Fuels Programs, Fossile Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office fo Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: EME, a New Jersey corporation with its principal place of business in Edison, New Jersey, is a wholly-owned subsidiary of KCS Group, Inc., a Delaware corporation. EME has marketed gas to industrial end-users including electric utility companies and cogeneration facilities and to local distribution companies since early 1984. Affiliates of EME are engaged in the exploration for production, gathering, processing of natural gas in New Mexico, Texas, Louisiana, and New York.

EME anticipates that it will sell the requested natural gas volumes on a short-term or spot basis and that the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility. EME requests authorization to export natural gas for its own account and for the accounts of

its U.S. suppliers and Canadian and Mexican purchasers.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EME's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 14, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–15045 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: Cooperative Agreement with BP Research

AGENCY: Department of Energy.

ACTION: Notice of intent to negotiate a Cooperative Agreement with BP Research for Membrane/Distillation Hybrid Process Research & Development for Propane/Propene Separation at Reduced Energy Costs.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR.14 (e) it plans to award a Cooperative Agreement to BP Research. This is a new award for membrane/distillation hybrid process research and development for propane/propene separation at reduced energy costs. The BP Research application was submitted in response to a notice of Program Interest (NOPI) published in the **Federal Register** on July 26, 1990, and in the Commerce Business Daily on August 6, 1990. This unsolicited application has been accepted by DOE in accordance with DOE Financial Assistance Rules 10 CFR 600.14(e)(1)(i) and (II). The Cooperative Agreement will have a three year project period for a cost of $7,449,850 with a DOE share of $2,099,850. The application is for the development of a unique facilitated transport membrane to selectively allow permeation of propylene molecules with retaining propane molecules. The BP proposal to develop molybdenum dimmers as facilitator for the membrane is a totally new approach to facilitated transport and is highly innovative. The application was evaluated and considered meritorious as the proposed concept has superior applicability and commercial potential to the U.S. petrochemical industry and the degree of industrial interest was found to be high. BP Research operates an excellent research laboratory and has a Pilot Plant suitable for onstream testing of the development process. The principal investigator, and co-principal investigator and the research team are highly qualified for the proposed research.

Contact: Department of Energy, Idaho Operations Office, attn: Ginger Sandwina, Contracts Management Division, 785 DOE Place, Iadho Falls, ID 83402–1129 (208) 526–8698.

Dated: June 17, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR DOC. 91–15042 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC)

Date and Time: July 8, 1991—9 a.m.–5 p.m.; July 9, 1991—9 a.m.–12 noon

Place: Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, California 94720, Building 50A, room 5132.

Contact: James S. Coleman, Department of Energy, Office of Basic Energy Sciences (ER–15), Office of Energy Research, Washington, DC 20585, Telephone: 301–353–5822.

Purpose of the Committee: To provide advice on the continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda: Briefings and discussions of:

July 8, 1991

- Report of Subcommittee on Combustion Research
- Other Subcommittee Reports
- Discussion of Letter to DOE
- Public Comment (10 Minute Rule)

July 9, 1991

- Further Discussion of Letter to DOE
- Other BESAC Business
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: James S. Coleman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 20, 1991.

Edwin F. Inge,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–15043 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–2097–000; et al.]

Questar Pipeline Co., et al.; Natural gas certificate filings

June 18, 1991.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Co.

[Docket No. CP91–2097–000]

Take notice that on May 23, 1991, Questar Pipeline Company (Questar), pursuant to section 7(c) of the Natural Gas Act, filed an application requesting permanent certificate authority to use the Texota Federal L No. 1 injection/withdrawal well in conjunction with the operation of Questar's Chalk Creek Underground Storage Reservior (Chalk Creek).

The Texota Federal L No. 1 well had previously been granted a limited certificate for a two year term in Docket No. CP89–1515–000. In the event that the requested authorizations are not in place prior to the expiration of the limited term certificate, Questar requests the Commission issue temporary authorization to provide for the use of the Texota well for Chalk Creek's upcoming 1991–1992 heating season.

Comment date: July 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket Nos. CP91–2280–000, CP91–2281–000, CP91–2282–000, CP91–2283–000]

Take notice that on June 14, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Columbia Gulf and is summarized in the attached appendix.

Comment date: August 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2280–000 (6–14–91)	Philbro Energy, Inc. (Marketer).	5,000 4,000 1,460,000	LA	LA	4–1–91, FTS–2, Firm.	ST91–8733–000 5–1–91
CP91–2281–000 (6–14–91)	Aquila Energy Marketing Corporation (Marketer).	13,400 10,720 3,912,800	LA	LA	5–1–91, FTS–2, Firm.	ST91–8737–000 5–1–91
CP91–2282–000 (6–14–91)	Appalachian Gas Sales (Marketer).	50,000 40,000 14,600,000	TX, LA, OLA	TX, LA, OLA	3–1–91, ITS–2, Interruptible.	ST91–8735–000 5–1–91
CP91–2283–000 (6–14–91)	American Central Gas Marketing Company (Marketer).	40,000 20,000 7,300,000	LA, OL	LA	2–1–91, ITS–2, Interruptible.	ST91–8734–000 5–1–91

[1] Offsore Louisiana is shown as OLA.

3. Mojave Pipeline Co., Kern River Gas Transmission Co.

[Docket No.'s CP89–1–007, CP89–2048–005]

Take notice that on June 10, 1991, Mojave Pipeline Company (Mojave), 4520 California Avenue, suite 200, Bakersfield, CA. 93309, filed in Docket No. CP89–1–000, and Kern River Gas Transmission Company, P.O. Box 2511, Houston, TX 77252–2511, filed in Docket No. CP89–2048, (collectively known as applicants), pursuant to section 7(c) of the Natural Gas Act and subpart A of the regulations of the Federal Energy Regulatory Commission (Commission)

hereunder, for an amendment to the certificates of public convenience and necessity issued to Mojave and Kern River on January 24, 1990. Mojave Pipeline Co., 50 FERC 61,069. Applicant seeks to amend these certificates, as more fully set forth in the amendment to its application which is on file with the Commission and is open to public inspection.

Applicant seeks authorization to change a small section of the route along which it will construct its pipeline. Two segments of the proposed reroute, located near Bakersfield, California and totaling 1.1 miles in length, may not be within the corridors studied in the Mojave-Kern River-El Dorado Environmental Impact Satement (EIS). Applicant states that it wishes to undertake the reroute in order to comply with environmental mitigation measures mandated by the Commission and with the wishes of the City of Bakersfield. Applicant therefore seeks Commission authorization to construct its facilities in the area not studied in the EIS.

Comment date: July 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragaphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15015 Filed 6-24-91;8:45am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2206-000, et al.]

Tennessee Gas Pipeline Co., et al; Natural gas certificate filings

June 17, 1991.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP91-2206-000]

Take notice that on June 7, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP91-2206-000, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to transport, on a firm basis, an aggregate maximum quantity of 71,610 Dt daily on behalf of four shippers and to construct and operate pipeline facilities necessary to provide this service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to provide an aggregate firm transportation service of 71,610 Dt per day on behalf of Lockport Energy Associates, L.P. (Lockport), Dartmouth Power Associates Limited Partnership (Dartmouth), Pepperell Power Associates Limited Partnership (Pepperell), and Boston Edison Company (Boston Edison). The shippers, quantities, receipt points, and delivery point are as follows:

Shipper	Maximum daily quantity (Dth per day)	Receipt point	Delivery point
Lockport	28,000	Gulf Coast	Lockport, NY.
Dartmouth	14,010	Wright, NY	Mendon, MA.
Pepperell	9,600	Niagara, NY	Tewksbury, MA.
Boston Edison	20,000	Gulf Coast	Mendon, MA.

Tennessee intends to commence service to Lockport, Dartmouth, and Pepperell on November 1, 1992. Service to Boston Edison is scheduled to commence on November 1, 1993.

In order to perform the contemplated transportation services, Tennessee intends to construct and operate facilities in two stages. For the service scheduled to commence in 1992, Tennessee proposes to construct and operate 18.25 miles of 30-inch mainline looping, 11.08 miles of 36-inch mainline looping, and a total addition of 3,100 horsepower of compression at two existing compressor stations. For the 1993 service, Tennessee proposes to construct and operate 9.59 miles of 30-inch mainline looping, 11.22 miles of 36-inch mainline looping, and an addition of 1,000 horsepower of compression at an existing compressor station. The estimated cost of these facilities is $72,702,000. Tennessee plans to initially finance these facilities with funds on hand, funds generated internally, borrowings under revolving credit agreements, or short-term financing which will be rolled into permanent financing.

Tennessee intends to provide the proposed transportation services under Rate Schedule NET-EU, which contains a single-part demand charge. The proposed demand charge is derived from the incremental cost of service associated with providing the transportation service to the four new shippers.

Comment date: July 8, 1991, in accordance with Standard Paragraph F at the end of the notice.

2. Northwest Pipeline Corporation

[Docket No. CP91-2246-000]

Take notice that on June 10, 1991, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP91-2246-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a proposed delivery meter, and for approval to reallocate a portion of Northwest Natural Gas Company (Northwest Natural) existing firm maximum daily delivery quantities under its blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that Northwest Natural has requested Northwest to establish a new meter station, the Samon Creek Meter Station, to be located in Clark County, Washington. Northwest indicates that the new meter station would be used for firm gas sales service to Northwest Natural under Northwest's Rate Schedule ODL-1 and/or for transportation deliveries for the account of shippers for whom Northwest is, or will be, authorized to transport gas. The estimated cost of the Salmon Creek Meter Station is approximately $250,000.

Northwest states that to facilitate deliveries to the proposed Salmon Creek Meter Station, Northwest and Northwest Natural have revised the Exhibit A of the May 15, 1989 ODL-1 Service Agreement to add the new Salmon Creek delivery point and to reflect the proposed reallocation of 50,640 therms of maximum daily delivery quantities from the existing Camas delivery point located in Clark County, Washington to the proposed Salmon Creek delivery point.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Green Canyon Pipe Line Co., Viking Gas Transmission Co., Viking Gas Transmission Co., Natural Gas Pipeline Co., of America, Natural Gas Pipeline Co., of America, Natural Gas Pipeline Co., of America

[Docket Nos. CP91-2254-000,[1] CP91-2255-000, CP91-2256-000, CP91-2257-000, CP91-2258-000, CP91-2259-000]

[1] These prior notice requests are not consolidated.

Take notice that on June 11 and 12, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (dated filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of [2]		Start up date, rate schedule	Related[3] dockets
				receipt	delivery		
CP91-2254-000 (6-11-91)	Green Canyon Pipe Line Company, P.O. Box 1396, Houston, TX 77251.	Superior Natural Gas Corporation.	25,000Dt 25,000Dt 9,125,000Dt	OLA	OLA	5-1-91, IT-GC	CP89-515-000, ST91-8688-000.
CP91-2255-000 (6-12-91)	Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	Enron Gas Marketing, Inc.	200,000Dt 200,000Dt 73,000,000Dt	MN, ND, WI	MN, ND, WI	4-24-91, IT-2	CP90-273-000, ST91-8894-000.
CP91-2256-000 (6-12-91)	Viking Gas Transmission Company.	Poco Petroleums Ltd.	207,450Dt 207,450Dt 75,719,250Dt	MN, ND, WI	MN, ND, WI	3-1-91, IT-2	CP90-273-000, ST91-8895-000.
CP91-2257-000 (3-25-91)	Natural Gas Pipeline Company of America, 701 E. 22nd St., Lombard, IL 60148.	Bridgegas U.S.A. Inc.	200,000 75,000 27,375,000	AK, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	CO, IA, IL, LA, NM, OK, OLA, OTX, TX.	4-6-91, ITS	CP86-582-000, ST91-8573-000.
CP91-2258-000 (3-25-91)	National Gas Pipeline Company of America.	Kerr-McGee Corporation.	50,000 35,000 12,775,000	AK, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	AK, CO, IA, IL, LA, NM, OK, OLA, OTX, TX.	4-5-91, ITS	CP86-582-000, ST91-8566-000.

Docket No. (dated filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of [2]		Start up date, rate schedule	Related[3] dockets
				receipt	delivery		
CP91-2259-000 (3-25-91)	Natural Gas Pipeline Company of America.	Williams Gas Marketing Company.	25,000 15,000 5,475,000	AK, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	CO, IA, IL, LA, NE, NM, OK, OLA, OTX, TX.	4-10-91, ITS.....	CP86-582-000, ST91-8630-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Northwest Pipeline Corporation

[Docket No. CP91-2252-000]

Take notice that on June 11, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-2252-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to partially abandon metering facilities at the existing Ritzville Meter Station (Ritzville) in Adams County, Washington, and to construct and operate upgraded metering facilities at Ritzville to replace those being abandoned, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to abandon the existing meter and to replace it with a meter with greater capacity. It is stated that the increase in capacity is needed to accomodate the increased needs of the Washington Water Power Company, for which Northwest provides firm sales and transportation services. It is explained that the existing facilities were installed by Pacific Northwest Pipeline Corporation, a predecessor of Northwest, in 1957 under Commission authorization in Docket No. G-12828. It is asserted that the proposed meter will provide a maximum station design capacity of 2,688 dt equivalent of natural gas per day. It is estimated that the cost of installing the new meter would be $24,795, which includes the $1,700 cost of removing the existing meter.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP91-2250-000]

Take notice that on June 11, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP91-2250-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to add and delete delivery points used to serve existing customers in Warrick County, Indiana, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Specifically, Texas Gas proposes to add delivery points to two existing customers, Boonville Natural Gas Corporation (Boonville) and Chandler Natural Gas Corporation (Chandler) and to delete the respective delivery points from a third existing customer, Ohio Valley Gas, Inc. (Ohio Valley). Texas Gas states that it would provide service to Boonville and Chandler pursuant to separate service agreements dated November 1, 1990. It is estimated that the Boonville delivery point would serve 6 residential customers receiving 6 MMBtu equivalent on a peak day and 870 MMBtu equivalent annually and that the Chandler delivery point would serve 76 customers receiving approximately 35 MMBtu equivalent on a peak day and 7,530 MMBtu equivalent annually.

It is asserted that the reason for the proposal is that both Boonville and Chandler have entered into sales agreements with Ohio Valley, dated October 25, 1990. It is explained that the delivery points would be deleted from Texas Gas' service agreement with Ohio Valley and would be added to Texas Gas' service agreements with Boonville and Chandler. It is stated that the proposed deliveries to Boonville and Chandler would be within their respective contract demands and that the service could be accomplished without detriment to Texas Gas' other existing customers.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. South Georgia Natural Gas Co.; Southern Natural Gas Co.

[Docket Nos. CP91-2272-002; CP91-2273-000]

Take[2] notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notices requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg., annual	Points of [2]		Start up date, rate schedule	Related [3] dockets
				Receipt	Delivery		
CP91-2272-000 (6-13-91)	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Waverly Mineral Gas Products Company.	2,800 1,369 500,000	AL	GA	04-06-91, IT	ST91-8595-000, CP90-2125-000.
CP91-2273-000 (6-13-91)	Southern Natural Gas Company, P.O. Box 2563 Birmingham, Alabama 35202-2563.	Consolidated Fuel Corporation.	10,000 10,000 3,650,000	LA, OLA, TX, OTX, MS, AL.	AL	04-12-91, IT	ST91-8590-000, CP88-316-000.

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Columbia Gas Transmission Corporation

[Docket No. CP91-2253-000]

Take notice that on June 11, 1991, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP91-2253-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon a point of delivery to Mountaineer Gas Company (MGC), located on a non-jurisdictional production pipeline in the Rocky Fork Production Field, Kanawha County, West Virginia pursuant to United's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to abandon a point of delivery to MGC for a tap consumer served directly from an existing gathering facility owned by Viking Energy, Inc, which is being abandoned due to the deteriorating condition of the line. Due to the condition of the line, Columbia states that the consumer is currently being provided alternative service from an existing MGC distribution line, located approximately 500 feet from the existing pipeline to be abandoned. It is stated that the proposed abandonment will not result in any abandonment of service to the consumer since MGC is responsible for providing and maintaining all necessary gas supplies and deliveries to the consumer.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15016 Filed 6-24-91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

[Rate Order No. WAPA 49]

Rate Order—Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a Rate Order for the Boulder Canyon Project power rates.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA-49 and Rate Schedule BCP-F3 placing increased power rates in effect on an interim basis. The rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis for a 5-year period or until they are replaced by other rates.

COMPARISON OF EXISTING AND PROPOSED RATES

[Boulder Canyon Project]

Rate schedules	Existing	Proposed
	BCP-F1	BCP-F3 [1]
Capacity Charge	$0.75/kW-month	$1.05/kW-month.
Energy Charge	3.410 mills/kWh	5.11 mills/kWh.
Composite Rate	6.813 mills/kWh	10.21 mills/kWh.

[1] Rate schedule BCP-F2 was never implemented.

The capacity component and the energy component of the rate reflect the Base Charge identified in 10 CFR part 904, Western Area Power Administration's (Western) General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 51 FR 43124, November 28, 1986 (Western's 1986 General Regulations), which provides the basic revenue requirements for the Boulder Canyon Project (BCP).

The Lower Basin Development Fund Contribution Charge identified in Western's 1986 General Regulations, which provides for the contributions to the Lower Colorado River Basin Development Fund, consists of an additional energy rate of 4.5 mills per kilowatthour (kWh) to purchase in Arizona and 2.5 mills per kWh to purchasers in California and Nevada.

The Base Charge increase reflects significant increases in overall costs associated with future replacements and operation and maintenance (O&M) expenses.

EFFECTIVE DATE: In order to ensure sufficient cash balances in the Colorado River Dam Fund, the new rates will become effective on the first day of the first full billing period after 6/10/91, and will continue in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-2453, (602) 352-2453.

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-1545.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, room 8G-061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN-10-89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an intreim basis to the Deputy Secretary of DOE; (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC.

The proceeding for the proposed power rates and the associated customer consultation and comment period were initiated on October 25, 1990, with a notice in the **Federal Register** (55 FR 43026).

The October 25 notice announced a public information forum for November 15, 1990, and a public comment forum on November 30, 1990, with the consultation and comment to end January 28, 1991.

Western, in the "Notice of Proposed Power Rate Adjustment, Boulder Canyon Project," (55 FR 43026) October 25, 1990, because of projected cash-flow deficiencies in early future years, presented two rate proposals for consideration. One proposal set a level rate for the entire study period while the other proposal set a lower level rate for the entire study period with an additional revenue component for each of the fiscal years (FY) 1991-95. The BCP customers were asked to indicate which proposal they preferred, and the first rate proposal was identified.

During the comment period, Western received 10 comment letters on the BCP rate adjustment. At the November 30, 1990, public comment forum, six persons representing customers commented orally. Five major issues and several miscellaneous issues were raised. All public comments were considered in the preparation of the rate order. Western has concluded that the BCP rate adjustment is needed to meet cost-recovery criteria.

Some of the BCP customers have expressed concern about how project rates are currently determined. On February 20, 1991, at a customer's request, a meeting was held with customer representatives for the express purpose of considering how future project rate adjustments should be prepared and processed. Initially, the BCP customers, along with Western and the Bureau of Reclamation, will review the principles of ratesetting for the BCP. Subsequently, specific action will be proposed for incorporation in BCP ratesetting methodology, and Western will review and consider those proposals. Changes in policy and regulation will be considered in the overall process. Western will include in the next BCP rate adjustment any of the proposals that it has accepted at that time.

A power repayment study (PRS) is prepared annually in accordance with DOE Order RA 6120.2, Power Marketing Administration Financial Reporting. The existing power rates for BCP are based on the FY 1986 PRS. The FY 1990 Current PRS indicates that the existing rates do not yield sufficient revenue to staisfy the cost-recovery criteria through the study period.

In Rate Order No. WAPA-49, results of the proposed FY 1990 PRS are being compared to the FY 1986 PRS, which was the basis for the existing BCP rates. The comparison shows the following differences:

1. The projected O&M expenses for the 5-year budget period (FY 1991-95) have increased about $9.0 million per year, which reflects inflation and more appropriately considers the age and associated replacement requirements of the BCP.

2. Project replacement for the 5-year budget period (FY 1991-95) has increased about $32.5 million. This large increase reflects in part the difference in reporting methodology between the two PRS's, as well as the more recent recognitions of needed replacements.

3. The cost of the visitor facilities increased $38.1 million, reflecting the impact of inflation and some changes in features.

Rate Order No. WAPA–49, confirming and approving the BCP rate adjustment on an interim basis, is issued, and Rate Schedule BCP–F3 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, June 10, 1991.

W. Henson Moore,

Deputy Secretary.

Older Confirming, Approving, and Placing Boulder Canyon Project Power Rates in Effect on an Interim Basis.

June 10, 1991.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments,and particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485(c), and acts and regulations specifically applicable to the Boulder Canyon Project, were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 0204–108, effective Decembeer 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Eneregy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE (Deputy Secretry); (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR part 903, published in the **Federal Register** on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Adjustment Act	Boulder Canyon Project Adjustment Act, July 19, 1940, (43 U.S.C. 618, *et seq.*).
Annual Uprating Program Payments	Uprating Program contributions which were provided by various Boulder Canyon Project (BCP) contractors in accordance with the 1984 Act and are to be repaid with interest to those contractors by fiscal year (FY) 2017.
Base Charge	Charges made up of an energy component and a capacity component according to Western's 1986 General Regulations, § 904.7.
BCP	Boulder Canyon Project.
Capacity Component	Shown in power repayment study (PRS) as a dollar per kilowatt (kW) per year charge. Billed on a dollar per kW per month basis. Applied each billing period to each kW of rated output to which each contractor is entitled by contract.
Colorado River Basin Project Act	The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501, *et seq.).*
Colorado River Dam Fund	A fund established by section 2 of the Boulder Canyon Project Act of 1928 which is to be used only for the purposes specified in the Boulder Canyon Project Adjustment Act of 1940, The Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act of 1984.
Contribution Charge	Lower Basin Development Fund Contribution Charge is part of the rate schedule and is expressed in mills per kilowatthour (kWh), required by law to be included in the BCP rates.
Conformed Criteria	Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.
DOE Order RA 6120.2	Power Marketing Administration Financial Reporting guidelines.
Energy Component	Expressed in mills per kWh. Applied to each kWh made available to each contractor.
1941 General Regulations	General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act.
Hoover Dam	The dam on the Colorado River which forms Lake Mead.
1984 Act	Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619, *et seq.*).
LCRBDF	Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.
Pinch-point	The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.
Project Act	Boulder Canyon Project Act, December 21, 1928 (43 U.S.C. 617, *et seq.).*
Proposed PRS	Establishes the revenues to be collected through a rate that the Administrator submits to the Deputy Secretary. Charges for capacity and energy rates will provide sufficient revenue to pay all annual costs plus required debt service.
PRS	Power repayment study.
Rate Brochure	Western Area Power Administration, Boulder Canyon Project, Proposed Power Rate Adjustment Brochure, Phoenix Area Office, October 1990. A document prepared for public distribution explaining the background of Western's rate proposal.
Reclamation	Bureau of Reclamation of the Department of the Interior.
Reclamation's 1986 General Regualtions	General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada, 43 CFR part 431, (51 FR 23960, July 1, 1986).
Western's 1986 General Regualtions	General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR part 904, (51 FR 43154, November 28, 1986).
Treasury	Secretary of the Department of the Treasury.
Uprating Program	Non Federally financed work to increase the capacity of the existing generating and associated electrical equipment at the BCP.
WAPA–49	Western Area Power Administration Rate Order No. WAPA–49 for BCP based on the FY 1990 PRS. WAPA–49 is the basis for the provisional rates.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period after June 10, 1991, and will be in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

1. On October 25, 1990, a formal 95-day customer consultation and comment period was initiated with an announcement of the proposed rate adjustment published in the **Federal Register** at 55 FR 43026. That notice also announced a public information forum conducted November 15, 1990, and a public comment forum conducted November 30, 1990. Several informal meetings of BCP contractor representatives were held prior to the initiation of the formal rate proceeding. At those meetings PRS data and methodology to be utilized in the ratesetting process were closely reviewed.

2. A document entitled Western Area Power Administration, Boulder Canyon Project, Proposed Power Rate Adjustment, Brochure, October 1990, Phoenix Area Office (Rate Brochure), which provided information about the BCP rate adjustment, was handed out at the November 15, 1990, public information forum. By letter of November 20, 1990, the Rate Brochure was mailed to BCP customers and interested parties.

3. At the information forum held on November 15, 1990, Western representatives explained the need for the rate increase and answered questions.

4. The comment forum was conducted on November 30, 1990, to give the public an opportunity to comment for the record. Six persons representing customers made oral presentations. Ten comment letters were received during the 95-day comment period ending January 28, 1991. Formally submitted comments have been addressed in this rate order. Western has responded to the comments and has included the responses as part of the record.

Project History

The BCP was authorized for construction by the Boulder Canyon Project Act (Project Act) on December 21, 1928 (43 U.S.C. 617, *et seq.*). The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the expressed purposes of (1) controlling the flooding in the lower regions of the Colorado River drainage system, (2) improving navigation of the Colorado River and its tributaries, (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands, and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized the Secretary of the Department of the Treasury (Treasury) to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million was allocated to flood control.

Construction of a dam in the Black Canyon of the Colorado River began in 1930, and the first generating unit of the powerplant went into service in 1937. Upon completion of the BCP facilities, power sales commenced, in accordance with the provisions of the Project Act, to contractors in the States of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Boulder Canyon Project Adjustment Act, July 19, 1940 (Adjustment Act), (43 U.S.C. 618, *et seq.*). The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987 (amended by the Hoover Powerplant Act of 1984 (1984 Act), August 17, 1984 (43 U.S.C. 619, *et seq.*)); to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the States of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequent and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the May 20, 1941, General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act (1941 General Regulations) for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase to the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was to be funded initially by advances from certain BCP contractors to Reclamation. Funds advanced would be returned to these contractors through credits on their monthly power bills. The 1984 Act also provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also requires that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the additional charge (Lower Basin Development Fund Contribution Charge (Contribution Charge)) is to be transferred to the Lower Colorado River Basin Development Fund (LCRBDF). The Contribution Charge is not part of the PRS, but is included in the rate schedule.

Under the 1984 Act, the BCP's power was sold to 15 customers located in the States of Arizona, California, and Nevada in accordance with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) (49 FR 50582, December 28, 1984), beginning on June 1, 1987.

Due to the numerous requirements set out in the 1984 Act and the earlier separation of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. Reclamation adopted 43 CFR part 431, General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (Reclamation's 1986 General Regulations) (51 FR 23960, July 1, 1986). Western adopted 10 CFR part 904, General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (Western's 1986 General Regulations) (51 FR 43154, November 28, 1986). These regulations supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Study

In accordance with Western's 1986 General Regulations, Western and Reclamation developed the data utilized in the PRS. The purpose of the PRS is to project a level of annual revenues sufficient to repay all costs and obligations of the BCP during the repayment period in accordance with applicable laws, regulations, policies, and directives.

The BCP FY 1990 PRS on which the proposed rates are based was prepared following the Conformed Criteria, the 1984 Act, Power Marketing and Financial Reporting guidelines (DOE Order RA 6120.2) and the guidelines set

out in Western's 1986 General Regulations. Western's 1986 General Regulations provided for a Base Charge for BCP power, made up of an energy component and a capacity component.

The energy component of the Base Charge is expressed in mills per kWh. This component is applied to each kWh made available to each contractor as provided for by contract, except for the energy purchased by Western at the request of a contractor to meet that contractor's deficiency in energy entitlement (pursuant to section 105(a)(2) of the 1984 Act and section F of the Conformed Criteria) and/or to reduce that contractor's Uprating Program credit carry forward as provided by contract.

The capacity component of the Base Charge is shown in the PRS as a dollar-per-kW-per-year charge. This is billed on a dollar-per-kW-per-month basis. The capacity component of the Base Charge is applied each billing period to each kW of rated output to which each contractor is entitled by contract. In addition, as required by the 1984 Act, Western's 1986 General Regulations provided for the Contribution Charge.

The Base Charge capacity and energy rates developed from the PRS are necessary to recover the costs associated with the BCP. The Contribution Charge as provided by the rate schedule is necessary to collect the revenues required by section 1543(c)(2) of the Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501, *et seq.*).

Existing and Proposed Rates for the Boulder Canyon Project

The existing power rates and the proposed power rates necessary to meet the revenue requirements for the BCP are listed below. These proposed rates will be in place for 5 years and are to become effective on an interim basis on the first day of the first full billing period after June 10, 1991.

COMPARISON OF EXISTING AND PROPOSED RATES, BOULDER CANYON PROJECT

	Existing	Proposed
Rate schedules	BCP-F1	BCP-F3
Capacity charge	$0.75/kW-month.	$1.05/kW-month
Energy charge	3.410 mills/kWh.	5.11 mills/kWh
Composite rate	6.813 mills/kWh.	10.21 mills/kWh

Certification of Rate

The Administrator of Western has certified that the BCP power rates are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies, regulations, and applicable laws.

Discussion

The BCP is considered a single entity for financial and repayment purposes and the power generated by the BCP is marketed in the States of Arizona, California, and Nevada.

The rate adjustment would increase annual power revenues by $13.4 when FY 1990 is compared to FY 1992. The increase is necessary to satisfy the cost-recovery criteria as set forth in DOE Order No. RA 6120.2.

The existing and proposed revenue requirements for the BCP are as follows:

TOTAL POWER REVENUE

	Existing (FY 1990)	Proposed (FY 1992)
BCP power revenue	$31,232,785	$50,232,396

Note: Revenue for FY 1991 reflects a mixture of existing and proposed rates.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the proposed rate-approval period.

COMPARISON OF 5-YEAR RATE PERIOD, REVENUES AND EXPENSES ($1,000)

	FY 1990 Rate Study 1991-95	FY 1986 Rate Study 1991-95	Difference
Total revenues	$244,314	$177,423	$66,891
Expenses:			
Operation and maintenance	99,562	54,760	44,802
Payments to States	3,000	3,000	0
Other	3,378	0	3,378
Annual uprating payments	[2] 76,946	[1][2] 88,157	(11,211)
Annual replacement payments	34,664	[1] 2,204	32,460
Interest	24,671	16,654	8,017
Total expense	242,221	164,775	77,446

[1] Not treated as an expense in FY 1986 rate study.
[2] Includes principal and interest.

Basis for Rate Development

The basis for charges for capacity and energy, generated and sold from the BCP, is set out in Western's 1986 General Regulations which provides for a Base Charge made up of an energy component and a capacity component.

Primary Issues—Public Comments

During the 95-day comment period, Western received 10 comment letters on the BCP rate adjustment, one of which included comments of two entities. At the November 30, 1990, public comment forum, six persons representing customers commented orally.

Written comments were received from the following sources:

Arizona Power Authority (Arizona)
Basic Management Incorporated (Nevada)
The City of Boulder City, Nevada (Nevada)
Colorado River Commission of Nevada (Nevada)
Lincoln County Power District No. 1 (Nevada)
Department of Water and Power of the City of Los Angeles (California)
Metropolitan Water District of Southern California (California)
Overton Power District No. 5 (Nevada)
Pioneer Chlor Alkali Company, Inc. (Nevada)
Southern California Edison Company (California)
Valley Electric Association, Inc. (Nevada)

Representatives of the following organizations made oral comments:

Arizona Power Authority (Arizona)
California cities of Anaheim, Azusa, Banning, Colton, and Riverside (California)

Colorado River Commission of Nevada (Nevada)
Department of Water and Power of the City of Los Angeles (California)*
Southern California Edison Company (California)

Most of the comments received at the public meetings and in correspondence throughout the 95-day customer consultation and comment period addressed the use of the pinch-point concept by the PRS and the associated future year surpluses, the cost of the visitor facilities, the treatment of replacements, perceived policy violations, and the function of a BCP engineering and oversight committee.

The comments and responses, at times paraphrased for brevity and consistency and at times quoted for essence, are discussed below.

Issue 1: Several contractors asked for implementation of the provisions of §§ 431.5 and 431.6 of Reclamation's 1986 General Regulations. Section 431.5 states, in part:

> Reclamation shall submit annually on or before April 15th to Western and Contractors, cost data, including one year of actual costs for the last completed fiscal year and estimated costs for the next 5 fiscal years, for operation, maintenance, replacements, additions and betterments, non-Federal funds advanced for the uprating program by non-Federal purchasers, and interest on and amortization of the Federal investment.

Section 431.6 states, in part:

> Reclamation shall submit annually on or before April 15th to Western and Contractors, an estimated annual operation schedule for the Hoover Powerplant showing estimated power generation and estimated maintenance outages * * *.

Also, there is the contention that § 431.5 cost data submitted by Reclamation should not be freely revised as to the costs subsequent to April 15.

Response: By April 15 of each year, Reclamation submits cost data to all Hoover contractors and Western, including 1 year of actual costs for the last completed fiscal year and estimates based on budget estimates for the next 5 fiscal years as required by Reclamation's 1986 General Regulations, § 431.5, and an estimated annual operation schedule showing estimated power generation and estimated maintenance outages as required by § 431.6.

Frequent revisions of costs have been made to reflect current costs and conditions. Often this was done as a result of concerns expressed by one or more BCP contractors. Limiting costs revision, while providing perceived consistency, would hinder the flow of information among the various parties interested in BCP financial activities.

Western expects the frequency of revisions of cost estimates to be discussed in the future by all concerned parties and agreement reached as to the need for and frequency of revisions.

Issue 2: It was pointed out that the budget on which the PRS is based lags behind, by up to 2 years, the time the rate detemined by the PRS is placed in effect.

Response: There definitely is a lag between budget implementation and implementation of the rate adjustment. The sequence of events that creates the lag between budget formulation, budget implementation, and its use in the ratesetting PRS is as follows.

The FY 1990 PRS is prepared in December 1990. It utilizes the FY 1991 budget document, which is the most recent approved congressional budget (CB). The 1991 budget document is for the 5 years, FY 1991–95. Initial formulation of the FY 1991 budget took place in January 1989. The time elapsed from initial FY 1991 budget formulation and its use in the FY 1990 PRS is 24 months. The time elapsed between the preparation of the FY 1990 PRS and the implementation of a rate based on that PRS is about 12 months. The total time esapsed between the formulation of the FY 1991 budget and rate implementation is about 3 years. It should be recognized that from the budget's formulation in January of 1989 until its approval by Congress in March 1990, the budget was subject to change, thus the reason for using the most recent CB.

Issue 3: Concern was expressed about the need for documentation of the costs associated with the visitor facilities.

Response: The estimated cost for the visitor facilities at Hoover Dam, based upon 1983 prices, was $32,000,000. The facilities included two parking structures to accommodate 420 cars, 20 tour buses, and 80 recreational vehicles, two 50-passenger elevators, the road realignment, transmission tower relocations, and a visitor center. The current estimate based upon October 1991 prices is $69,000,000, or an increase of $37,000,000. The facilities as currently designed include only one multi level parking structure in lieu of the two structures originally conceived plus the addition of the interpretive materials (such as visual displays), an additional adit to a new penstock platform, a ventilation shaft, and a utility bore hole. It should be noted that the 1983 estimate includes the visitor center and parking structure as a single cost, whereas in the 1991 estimate the parking structure and visitor center, which includes the interpretive costs, are separated.

The noncontract costs associated with investigation, design and specifications, and construction supervision have increased from $6,400,000 in the 1983 estimate to $11,197,000 in the 1991 estimate, or a total of $4,797,000. For estimating purposes noncontract costs are computed based upon historical data as a percentage of the construction costs. The 1983 noncontract costs were estimated at 25 percent of the construction costs. The 1991 noncontract costs are currently estimated at approximately 20 percent of the construction costs.

Minor contracts, as listed in the 1991 estimate, are to cover contracts under $50,000 face value and contingencies on the major contracts. The 1983 estimated costs included the contingencies in the feature item. The estimated construction costs for each feature in the 1991 estimate were arrived at from actual contract costs, historical costs, or the estimated construction costs as provided by an architectural and engineering firm. Therefore, the $4,859,000 in minor contracts in the 1991 estimated cost are to cover unanticipated claims on ongoing contracts and/or cost overruns on unawarded contracts and other contracts under $50,000.

Issue 4: The ratesetting methodology, known as pinch-point, utilized by Western results in surplus revenue in some years. The pinch-point methodology should be clearly stated. Also, the use of pinch-point methodology and the resulting surplus revenue in the PRS is inconsistent with Western's 1986 Regulations, and Western's 1986 Regulations should be amended.

Response: The level of the rate is normally dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due. Such ratesetting future year is known as the PRS pinch-point, and will likely be greater than the rate necessary to meet revenue requirements of the years that follow. This is consistent with paragraph 10c of DOE Order RA 6120.2 which states in part that, "Revenue and cost estimates for the remaining years of the power system's repayment period should reflect price levels, rate levels, and contractual commitments consistent with conditions anticipated during the cost evaluation period." Often this results in the prepayment of debt and the accumulation of large amounts of

* Two representatives made oral comments, and one of those also commented, along with another person, for Southern California Edison Company.

surplus revenues by the end of the power system's repayment period. However, DOE Order RA 6120.2 also requires that Western review the adequacy of the current rates through the annual preparation of a PRS. Rates will then be adjusted, either upward or downward, as necessary and as administratively feasible, to insure that the revenue level satisfies all the criteria specified in Western's 1986 General Regulations.

The provisions of Western's 1986 General Regulations do not preclude the existence of surplus revenues. Section 904.5(a) of those regulations states in part that, "Western shall collect all electric service revenues from the project in accordance with applicable statutes and regulations and deposit such revenues into the Colorado River Dam Fund. All receipts from the project shall be available for payment of the costs and financial obligations associated with the Project."

Pinch-point methodology, even though it may result in surplus revenue in some future years, is a supportable approach for setting BCP rates. Western recognizes that such methodology is a concern of some of the BCP customers. Consequently, Western met with BCP customers on February 20, 1991, to discuss future ratesetting procedures and assumptions for the BCP. The February 20 meeting resulted in the formation of a customer/Western/Reclamation group to identify the principles of BCP ratesetting. Any change in BCP ratesetting will be reviewed for consistency with policy and regulation.

Issue 5: Various changes to the PRS were suggested as follows: The PRS should show subtotals at the end of the budget period and at the end of the contract period. The PRS columns should be reordered with revenue requirements shown, then resources, and finally rates. Western's PRS computer program needs to be changed with respect to the computation of column 25. The PRS should be modified to accommodate display of the carry-over balance in the revolving fund.

Response: The response to the above issues are in the order that the issues are presented.

Subtotals, if shown, in the PRS at the end of the budget period and at the end of the contract period would not be of value since they would include historical, as well as future, data. Consequently, Western has elected not to show any additional subtotals.

The PRS columns, as displayed, are similar to and consistent with the display for other Western projects, and there does not seem to be any overriding reason to change. Rates that might be shown annually would have no significance to the purpose of the PRS since the study sets rates on a long-term basis.

Western agrees that the data in column 25 is misleading for some years, as is the total after the last study year. However, the column 25 display does not impact the results of the PRS. Western will correct the display of column 25 before the next rate adjustment.

The suggestion that the PRS should be modified to accommodate display of the carry-over balance in the revolving fund will be considered by Western for implementation, but at this time the PRS has not been changed since this has policy implications for other revolving fund projects which should be coordinated and considered.

Issue 6: It was suggested that there was significant variation in operation and maintenance (O&M) cost from year to year for the BCP, and that these variations should be explained and documented. Also, it was suggested that O&M should incorporate an inflation factor for the entire period of the PRS.

Response: Year to year variation in O&M expense is not unusual and should, in fact, be expected. It should be recognized that O&M does not necessarily reflect a cost index, such as the consumer price index, but more so represents the wear and tear on equipment.

O&M expenses have been discussed in detail from time to time at the various customer meetings that preceded the formal rate adjustment activities. During the consultation and comment period, detailed O&M data was available at locations specified in the **Federal Register** that initiated the BCP rate adjustment.

Looking at the ratesetting PRS, the percent changes in total O&M from year to year vary from a high of 16.2 percent (1988 to 1989) to a low of minus 12.1 percent (1995 to 1996 and beyond). These variations seem to be well within what might be expected on a project as large and dynamic as Boulder Canyon.

Reclamation's budget guidelines do not presently allow for inflation to be factored into its budget documents. Western uses a 4-percent inflation factor for its budget. These budget documents are used for the first 5 future years in the PRS. Estimating the economic climate beyond 5 years is generally unreliable and, therefore, inflation is not applied to the out years of the PRS.

Issue 7: Several BCP contractors asked that the annual decreases of carry-over revenue shown in the column 47 of the PRS be explained. Also, several contractors requested an explanation of the difference between the carry-over in the PRS and the cash balance as indicated by Reclamation.

Response: The PRS indicates, in column 47 labeled "Cumulative Earned Surplus," a revolving fund carry-over balance at the end of FY 1988. These funds are available, and are used, to assist in meeting the future annual obligation of the project. During FY 1989 the total income to the project was not sufficient to pay all the annual expenses. A portion of the FY 1988 revolving fund carry-over was used to pay for the remaining annual expenses in FY 1989. The revolving fund carry-over balance at the end of FY 1989 was therefore reduced by the amount of the insufficiency. Again in FY 1990, the total income to the project was not sufficient to pay all of the annual expenses and the revolving fund was reduced by the amount of the FY 1990 insufficiency. The projected revenue and costs data for FY 1991 indicates that in addition to the total income, all of the remaining carry-over balance in the revolving fund at the end of FY 1990 will be needed to meet FY 1991 annual expenses.

It should be noted that the funds shown as year-end revolving fund carry-over balances were, for the most part, created by deferring, when permissible, all principal and interest payments on the project's investments. This procedure has been necessary to assure that sufficient funds would be available at the end of FY 1990 to prevent the project from becoming deficit during FY 1991.

The revolving fund carry-over balance at the end of FY 1990 reconciles to Reclamation's "cash" balance at the end of FY 1990. The PRS carry-over balance may be reconciled to Reclamation's cash balance by considering the difference between power sales and cash received and the difference between actual dollars expended and dollars obligated. The revenues shown in the PRS are reflective of actual power sales made during FY 1990, not "cash" received during FY 1990. Power sold during a month is billed the tenth of the following month, with payment due 20 days later.

Western then transfers this revenue to Reclamation. This results in about a 2-month lag between the actual sale of power as shown in the PRS and the receipt by Reclamation of the revenue associated with the sale. The PRS shows actutal FY 1990 costs for completed activities, while Reclamation is required to reduce the "cash" available in the revolving fund by all obligations which have been incurred, including items such as undelivered orders and stores.

Undelivered orders and store costs were not included in the PRS. To the extent practicable these costs will be included in the future studies.

Issue 8: Replacements Issues:

Issue: Replacements should not be annualized (i.e., expensed in the PRS). Such expensing of replacements is in violation of DOE Order RA 6120.2, paragraph 10.1, and inconsistent with section 5 of the Adjustment Act.

Paragraph 10.1 of DOE RA 6120.2 states:

> Future replacement costs will be included in repayment studies by adding the estimated capital cost of replacement to the unpaid Federal investment in the year each replacement is estimated to go into service, and adding it to the allowable unamortized investment. The capital cost of each replacement is determined by estimating the cost at current price levels of the new unit of property, less salvage, if any, at the end of the service life of the unit replaced. The allowable unamortized investment is developed by adding each year's investment as it goes into service and then deducting each increment of investment at the end of its allowable repayment period. Replacements should be accounted for separately from the original investment.

Section 5 of the Adjustment Act states:

> If at any time there shall be insufficient sums in the Colorado River Dam Fund to meet the cost of replacements, however necessitated, in addition to meeting the other requirements of this Act, or of regulations authorized hereby and promulgated by the Secretary, the Secretary of the Treasury, upon request of the Secretary of the Interior, shall readvance to the said fund, in amounts not exceeding, in the aggregate, moneys repaid to the Treasury pursuant to section 2(b) hereof, the amount required for replacements, however necessitated, in excess of the amount currently available therefore in said Colorado River Dam Fund. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums, not exceeding said aggregate amount, as may be necessary to permit the Secretary of the Treasury to make such readvances. All such readvances shall bear interest.

Response: While DOE Order RA 6120.2 allows for the capitalization of replacements, it also allows for replacements to be treated as an annual expense. DOE Order RA 6120.2 provides for including the cost of a replacement in the year it is placed in service, and adding such cost to the allowable unamortized investment. Where replacements are expensed, the replacement is recognized as a cost in the year it is placed in service, and paid for in that year. Further, the allowable unamortized investment of an expensed replacement would normally be zero.

The FERC, in its May 18, 1988, Order approving the rate study upon which Rate Schedule BCP–F1 was based, did not find fault with essentially expensing replacements at that time. Western does not feel that the FERC will change its position with this filing and find the expensing of replacements in violation of paragraph 10.1 of DOE Order RA 6120.2.

The above-cited statutory provision of section 5 of the Adjustment Act cited above does not require that all funds required for replacement work be readvanced from the Treasury; rather, the provisions allow for such readvancement from the Treasury where "* * * there shall be insufficient sums * * * to meet the cost of replacements * * *" (emphasis added). If Congress would have intended all replacement work to be funded by readvances from the Treasury, whether or not sufficient funds were available in the Colorado River Dam Fund, it could have easily provided for such a result. However, Congress did not require readvances for all replacement work, and Western declines to adopt such a position. The rates as set forth in this rate order will provide the necessary revenues to pay for the projected replacement work. Therefore, at this time it is not anticipated that a readvance is necessary.

Section 2 of the Adjustment Act clearly provides for the expensing of replacements for the BCP. The amendment of section 2 of the Adjustment Act, by the 1984 Act, significantly changed the financial treatment of the BCP by requiring that sufficient revenues be collected anually to pay for operation, maintenance, and replacements. Section 2, as amended by the 1984 Act, reads in part as follows:

> All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:
>
> (a) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriations Acts * * *.

Comparing section 2 and section 5 of the Adjustment Act, it is apparent that section 2 provides for normal BCP financial operation utilizing revolving fund authority while section 5 deals with the special situation of an unusual or emergency deficiency in available funds.

The Deputy Secretary, by virtue of approval of these rates, recognizes that even if replacements are normally to be capitalized as a matter of policy, a deviation in this instance is justified as allowed in paragraph 1. of DOE Order RA 6120.2. Further, as described above, there are statutes that govern the issue, which is also recognized in the departmental order.

Issue: It was suggested that PRS should not include replacements after the end of the contract period (FY 2017) and that the cost of replacements with life extending beyond the end of the contract period should be prorated.

Response: DOE Order R.A. 6120.2, paragraph 10(1) begins, "Future replacement costs will be included in the repayment studies * * *." The FERC in its May 4, 1990, Order (Docket No. EF 89–5041–000) relating to the filing of proposed rates for Western's Parker-Davis Project, clearly interprets the above cited paragraph 10.1. to mean that replacement costs are to be included for the entire repayment study period. The United States has the responsiblity to maintain BCP in a safe manner and in sound operating condition. Sound operation was expected during its first 50 years of operation and should likewise be expected during all future years. The plant's power resource is contracted from customer to customer over its life, even though the contracting entities may or may not remain the same from one contracting period to another. It would be unreasonable to expect that a new group of customers would receive a lesser facility than their predecessors. For these reasons, Western does not feel that not including replacements after the end of the contract period (2017) or prorating replacements with lives beyond the end of the contract period is acceptable.

Issue: By subsequently reducing the original level of replacements, there was acknowledgment of unwarranted replacements. In effect, this constituted a deviation on the intent of the Reclamation Act of 1939. Section 9(c) of the Reclamation Act of 1939 states, in part:

> Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed 40 years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than three per centum per annum, and such other fixed charges as the Secretary deems proper * * *.

Response: It is true that replacement costs were reduced significantly as a

result of interface among the various parties interested in the replacement program of the BCP. It is not unusual to take a close look at costs immediately prior to expending funds or when considering a rate adjustment. The close scrutiny that might result in a reduction in estimated costs does not constitute an acknowledgment of previous unwarranted costs or a deviation from the intent of the Reclamation Act of 1939 but rather reflects professional judgment and current project condition. Future costs are adjusted from time to time in order to accomplish optimization of the BCP within the confines of budget constraints and the various laws and regulations.

Issue: Replacements should not be made because of obsolescence or to maintain state-of-the-art status.

Response: The general concept is correct. Replacements that may appear to be made because of obsolescence or to maintain state-of-the-art status are usually made because of a lack of reliability and/or unavailability of spare parts. BCP replacements will continue to be closely monitored to ensure they are necessary and not made solely because of age or to maintain state-of-the-art status.

Issue: Repacement costs appears to be excessive.

Response: Prior to development of the proposed rate, replacement costs were closely scrutinized in a joint effort by Western, Reclamation, and the BCP contractors. For the first 5 future years of the PRS, replacements are projected to total about $34.7 million. Considering current dollars and the age of the project, the replacement cost over the next 5 years is well within expectations. The replacements included in the PRS are considered to be required to maintain project integrity and, therefore, are consistent with the operational responsibility of Reclamation and Western.

Issue 9: It was suggested that to help eliminate any cash-flow deficiency for the BCP, the repayment (inclusive of interest) at the current interest rate should be deferred for the air slots and the visitor facilities.

Response: The BCP is expected to be able to get through FY 1991 without experiencing a cash-flow deficiency. This has been achieved by deferring interest payments on the investments associated with the Dam and Appurtenant Works, Air Slots, and Flood Control, and to the extent practicable curtailing all nonessential activities. The PRS presented in the Rate Brochure deferred interest costs at the interest rate associated with the individual investment. However, in the Provisional Rate PRS the deferred interest costs are at the current Treasury interest rate in effect at the time the deferment occurs. This is consistent with Western's ratesetting policy.

Issue 10: It was suggested that a current audit should be performed for the BCP.

Response: At this time, neither Western nor Reclamation is contemplating having an audit of the BCP performed. It is felt that the accounting for the project is in accordance with Western and Reclamation instructions and regulations. However, the BCP will be part of the Western-wide audits that will be conducted periodically. The initiation of a new process, in FY 1987, has required significant adjustments in Western, Reclamation, and customer interface. The extent of public involvement and the complexities of the work demand that new processes be developed. Accordingly, all of these parties have agreed to cooperate in a effort to resolve the various concerns regarding the accounting and ratesetting of the BCP.

Issue 11: It was suggested that the BCP's Engineering and Oversight (E&O) Committee's role be defined and that part of its role would be to have the authority to participate in budget formulation for the BCP. Also, it was suggested that the role of the E&O Committee should be formalized in a letter agreement. Further, the E&O Committee should act as a facilitator of communications.

Response: Prior to this time, the E&O Committee functioned somewhat informally. Likewise, the role of the E&O Committee is not the subject of formal agreement. Western feels that the E&O Committee's work to date has been beneficial to all parties involved with the BCP rate adjustment. It seems appropriate to formalize the existence and role of such committee. It should be recognized that the involvement of Reclamation with the E&O Committee would likely be even greater than that of Western. Consequently, Reclamation would be expected to take the lead in any E&O Committee activity. While Western feels that the E&O Committee could facilitate communications and assure thorough coordination of issues, among all parties, Reclamation and Western have the ultimate decision making authority in budget formulation for the BCP.

Issue 12: It was proposed that Western's policy regarding the use of forced payments should be clearly established, and that forced payments are beneficial and should be documented for each power repayment study in which they are applied.

Response: Western's policy is to utilize forced payments to the extent they result in a rate that is the lowest possible consistent with sound business principles. Documentation of forced payments does occur within the PRS and is part of the supporting and analytical printout of the study. Consequently, Western does not believe there is a need for additional identification of forced payments in the PRS.

Issue 13: The treatment of the cost of pressure relief valve repair as an extraordinary expense was questioned.

Response: All expenditures for the BCP are broken down into O&M, replacements, additions, or extraordinary maintenance. Anything that requires a considerable amount of money to repair or renovate, but is not being replaced, is categorized as extraordinary maintenance. Pressure relief valves are included in this category since each valve will require up to $200,000 to rebuild, using large amounts of labor and material to repair cavitation and replacement of necessary removable parts. Work is planned on two valves (one in each wing of the powerplant) each year in connection with necessary turbine work.

Issue 14: It was suggested that certain data required by the FERC's filing requirements (18 CFR 300, specifically sections 11(b)(3)(vi), 11(b)(5)(ii) and 11(b)(5)(iii)) be provided to the customers during the consultation and comment period.

Response: These sections are part of the required technical support for the rate schedule that is made up of statements A through F. Statements A through F are not prepared until after the close of the consultation and comment period. The source of these statements, except F, is the PRS. While the statements are not available to interested parties during the consultation and comment period, the PRS is available. The information that appears in the sections mentioned in this issue can be readily developed by a user of that PRS. As stated later in this Rate Order under Availability of Information, the entire record of this rate adjustment, including statements A–F, is available for public review.

Issue 15: It has been proposed that there be immediate establishment of a BCP rate for 1 year in lieu of the usual implemention of a long-term rate in accordance with standard procedures. Further, during that year, issues associated with the BCP rate process and financial management would be

resolved leading to the implementation of a long-term rate.

Response: If there was a pressing need for the immediate implementation of a rate for a short term, Western feels that such rate implementation could and would be accomplished. However, at the present time there is no need to utilize a rate for a short term, and BCP rate implementation is following the normal process.

Issue 16: Two contractors felt that their requests for information were not responded to. The requestors and the dates of request are Colorado River Commission of Nevada, November 6, 1990; and Lincoln County Power District No. 1, January 9, 1991.

Response: A November 6, 1990, letter from the Colorado River Commission was a "Request for copies of Phoenix Area Project's budget and financial data" for purposes of the "analysis of the cost of service for the Federal power resources." The request did not mention in its subject line or within the letter the proposed power rate adjustment for the BCP. Since the Colorado River Commission did not indicate that its request for data was focusing on the BCP rate adjustment, Western did not treat it as part of the rate activity and responded to the request by letter of January 28, 1991.

Lincoln County Power District's (District) request of January 9, 1991, specifically referenced the BCP rate adjustment and asked that the response be provided by January 24, 1991, to their consultant.

Western's response was by faxogram on January 24, 1991, sent to the District's consultant as had been specified by the January 9, 1991, letter.

Western feels it has properly and adequately responded to both requests of information. The record of decision for the BCP Rate Adjustment, as required by § 300.10(f)(2) of 18 CFR 300, does not include letters related to Colorado River Commission's request of November 6, 1991, since that request was not related to the BCP rate adjustment. However, the District's request of January 9, 1991, and related documents are included because it was BCP rate adjustment related.

It should be recognized that the Notice of Proposed Power Rate Adjustment, Boulder Canyon Project, (55 FR 43026) October 25, 1990, states under Availability of Information that, "All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Boulder City Office, located at the address noted above."

Western, to the extent that it is able to do so, willingly provides rate adjustment documents and data in response to oral or written requests.

Issue 17: A plan was proposed which would require each contractor to deposit its pro rata share of a stated annual contribution in a replacement escrow account in the contractor's name, to be invested "* * * and to be available for requisition by Reclamation for replacements, all in a manner similar to requisitions from escrow accounts for investments in the uprating program. The amounts so collected would be excluded from revenue requirements to be met by rates."

Response: Western agrees that this proposal might be a viable alternative approach to providing funds that could be applied to BCP replacements. Such an approach could, at some future date, be considered for incorporation in the financial management of the BCP.

Issue 18: It was recommended that joint agency procedures should be agreed to between Western and Reclamation detailing the financial forecasting/rate development process. These procedures should establish specific requirements and time tables for accomplishment of the requirements by both Western and Reclamation. Also, a concern was expressed that there is a lack of coordination of data flow between Reclamation and Western.

Response: Since the creation of Western, there has been close coordination between Western and Reclamation. While there exists no specific written procedures for such coordination for the BCP, aside from §§ 431.5 and 431.6 of Reclamation's 1986 General Regulations and the agreement dated March 26, 1980, between Reclamation and Western, the flow of information between the two agencies has been freely and willingly exchanged.

Western is open to further discussions with regard to the possible formalization of procedures with Reclamation.

Issue 19: Western can and should utilize a shorter ratesetting period, while still forecasting revenue requirements over the total 55-year planning period. A shorter period for establishing rates is consistent with DOE Order RA 6120.2, which requires the annual preparation of power repayment studies, and FERC filing requirements, § 300.1(b)(6) of 18 CFR 300, which limits the confirmation and approval period by FERC of Western's rates to 5 years.

Response: Paragraph 10a of DOE Order RA 6120.2 does provide for publication annually of a PRS. However, the annual publication is for the purpose of determining the need for a rate adjustment rather than being a vehicle for setting rates for a short period of time.

While § 300.1(b)(6) of 18 CFR 300 states that the rate approval period must not exceed 5 years, the apparent purpose is to provide a period of time that would limit the use of any one rate without reevaluation.

Further, an annual rate adjustment would add to project cost and would be exceedingly time consuming.

For these reasons, Western does not feel that a shorter ratesetting period, while still forecasting revenue requirements over the life of the study, is supported by either DOE Order RA 6120.2 or 18 CFR 300.

Issue 20: It is felt that Reclamation and Western have duplicated costs when going from historical costs to budget costs. In explanation, one comment was:

> Certain contracts issued in FY 1989 were not completed by fiscal year end. Since the work was not complete, the 1990 budget included the same work not completed in 1989, even though the funds for such projects were obligated in 1989. Thus, amounts shown as expenditures in the 1990 budget will not actually be spent. Their duplication of amounts causes the FY 1990 estimated costs to be overstated.

Further, it was stated that both Reclamation and Western need to take responsibility for seeing to it that actual expenditures conform to the budget.

Response: Funds available for a specific contract may be totally obligated in a particular fiscal year and only partially expended due to slippage in contractor scheduling or other reasons. An unliquidated obligation would then be carried forward into the next fiscal year for the unexpended portion of the obligation. These unliquidated obligations are then available until expended. However, the PRS does reflect the use of funds until that year in which the associated facility is completed. Therefore, there is no duplication and costs are not overstated.

The timing factor mentioned above also impacts the relationship between actual expenditures and budgeted amounts. However, the desirability of having a close match of actual dollars to those budgeted is fully recognized and is a goal that both Western and Reclamation continously strive to achieve.

Issue 21: It was stated that "One of the major items making up extraordinary maintenance is office remodeling. Out of a total of $6.9 million to be spent between 1991 and 1995, almost half is for office remodeling * * *."

Response: The $6.9 million of extraordinary maintenance, with almost half for office remodeling, is an amount that has been revised. Presently, for the BCP there is about $400,000 in office remodeling out of approximately $5,000,000 of total extraordinary maintenance expense from FY 1991 through FY 1995.

Issue 22: Certain law, policy, and regulation related to the setting of rates for the BCP were cited as not being appropriately considered and/or applied. Those cited were: DOE Order R.A.6120.2, paragraphs 6a, 8, 10a, and 10f; the Adjustment Act, section 5; Reclamation's 1986 General Regulations, §§ 431.5 and 431.6; Western's 1986 General Regulations, FERC's filing requirements, 18 CFR 300; the 1984 Act; and the Reclamation Act of 1939, section 9(c).

Response: Law, policy, and regulation listed in this issue have been specifically addressed in responding to the various other issues of this rate order. However, any continuing perceived infractions will be further reviewed and discussed with the BCP contractors and other interested parties.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western conducts and environmental evaluation of proposed rate adjustments.

Western prepared an environmental assessment (EA) for the proposed rate adjustment. The EA documented only economic impacts for the proposed action, and found no significant impacts to the human environment as defined by the CEQ. Based on the information included in the EA, DOE issued a finding of no significant impact on May 3, 1991.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, letters, memorandum, and other documents made or kept by Western for the purpose of developing the power rates is available for public review at the Phoenix Area Office, Western Area Power Administration, Division of Power Rates and Statistics, 615 43d Avenue, Phoenix, Arizona 85009–5313, telephone: (602) 352–2525; Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401–3398; and the Office of the Assistant Adminstrator for Washington Liaison, Western Area Power Administration, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmaiton and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the first full billing period after June 10, 1991, Rate Schedule BCP–F3. This rate schedule shall remain in effect on an interim basis pending the FERC confirmation and approval of them or substitute rates on a final basis for a period of 5 years, or until it is superseded.

Issued At Washington, DC, June 10, 1991.

W. Henson Moore,

Deputy Secretary.

[Rate Schedule BCP–F3, Supersedes Rate Schedule BCP–F1 and Rate Schedule BCP–F2 which was not implemented]

Schedule of Rates for Power Service

Effective

On the first day of the first full billing period after June 10, 1991.

Available

In the marketing area served by the Boulder Canyon Project.

Appplicable

To power customers served by the Boulder Canyon Project supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Capacity Charge: The Base Charge capacity rate is $1.05/kW-month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

Energy Charge: The Base Charge energy rate is 5.11 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

Lower Basin Development Fund Contribution Charge

The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above base charge capacity and energy rates. The Lower Basin Development Fund Contribution Charge shall be applied also to each kWh of overrun.

Adjustments

None.

[Fr Doc. 91–14979 Filed 6–24–91; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–398–4]

Fossil Fuel-Fired Utility Steam Generating Units; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice is to inform the public and affected utility units that EPA has prepared guidance and a submittal form for elections under section 406 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. Section 406(a) provides that Governors may elect "bonus" allowances for fossil fuel-fired utility steam generating units within "clean" states, which are in lieu of any other bonus allowances that an eligible unit would receive under section 405. EPA has sent this guidance to the Governors of each state most likely to be affected by section 406. These states are Arizona, Arkansas, California, Colorado, Louisiana, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Vermont, and Wyoming, based on the

most recent draft of the National Allowance Data Base (NADB).

DATES: Governors must notify the Administrator by sending the appropriate submittal form (or sufficient information as outlined in the submittal form) to EPA by June 30, 1991, The Governor's notification may either declare an election of bonus allowances or may defer the election of bonus allowances until publication of the final database. Governors that do elect at this time will have an opportunity to revise their elections upon publication of the final National Allowance Data Base in December, 1991.

Failure to provide the necessary notification (either an election or affirmative deferral) to EPA by June 30, 1991 will result in EPA determining the choice most beneficial to all the fossil fuel-fired steam generating units in the State.

ADDRESSES: Copies of the guidance and submittal forms are available upon request at the following location: U.S. Environmental Protection Agency, Acid Rain Division, ANR–445, 401 M Street, SW., Washington, DC 20460, Attention: Clean States.

Completd forms (signed by the Governor) may be sent to the same location.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 382–3877, (FTS) 382–3877.

SUPPLEMENTARY INFORMATION: Acid rain occurs when sulfur dioxide and nitrogen oxide emissions are transformed in the atmosphere and return to earth in rain, fog or snow. Approximately 17 million tons of S02 were emitted in 1985 by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The Acid Rain control program adopted in title IV of the Clean Air Act Amendments of 1990 (Pub. L. 101–549) will result in a permanent 10 million ton reduction in sulfur dioxide (SO_2) emissions from 1980 levels. The centerpiece of the acid rain control program is an innovative market approach in which emission allowances are transferable, allowing market forces to govern their ultimate use. To be in compliance with the Act, affected sources (mainly electrical utilities) are required to hold an amount of emission allowances at least equal to their annual emissions. Existing sources, and some other sources as provided in the amendments, will receive an initial allowance allocation. If a source reduces it emissions more than required, it will have left-over allowances that it can sell to another source. This would allow the other source to emit more than otherwise allowed under title IV while remaining in compliance. Such allowance transactions will achieve total emissions reductions in the most cost-effective way.

Title IV is implemented in two phases. Phase I runs from 1995 to 2000 and affects 261 units which are specifically listed in the Act. Phase II begins in 2000 and is permanent. It affects most utility units that emit SO_2. Also, units not explicitly affected by Phase II requirements may opt into the allowance system.

Section 406 of the Act provides bonus allowances for "clean" states at the election of such states' Governors. States which, in 1985, had a state-wide average sulfur dioxide emission rate for all fossil fuel-fired utility units of 0.8 pounds per million British Thermal Unit (lb/mmBtu) or less are considered clean states. EPA has not yet determined which states are eligible because the National Allowance Data Base (NADB), which will support such a determination, is not final. However, from the draft database and assuming that states which had an average 1985 emission rate of less than 0.9 lb/mmBtu may be eligible under section 406 in the final database, the following states are most likely to be eligible: Arizona, Arkansas, California, Colorado, Louisiana, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Vermont, Wyoming.

The bonus allowances in section 406 are in lieu of other bonus allowances provided under section 405. If the Governor of an eligible state does not make an election to choose calculations under sections 405 and 406 (that is, if the Governor does not notify EPA of a choice by June 30, or if the Governor does not make the election following publication of the final database in December when that Governor has, as of June 30, affirmatively deferred the election until publication of the final database), then, as provided by section 403(a)(1) of the Act, EPA will determine which of sections 405 and 406 provides more allowances for the State Determinations by the Administrator regarding State eligibility for this election, unit eligibility for bonus allowances under section 406, and, in the absence of a Governor's election, the elections that would provide the greatest benefit to units in the State will be proposed in December, 1991. Because the database upon which the Governors' decisions are based is not yet complete, EPA will allow Governors to affirmatively defer their elections until publication of the final database or to change their elections based upon the final database, which will be available in December, 1991, if the Governors' decisions would be significantly affected by changes in the database.

To ensure adequate notice to all potentially eligible units, EPA has chosen to provide this notice.

The guidance and submittal form provided today are designed to further the requirements of the Paperwork Reduction Act by reducing the burden upon Governors in responding to section 406 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. Also, the submittal form does not go beyond the necessary notification required by the Act. Submittal of notification to EPA by June 30, 1991 is mandated under the Clean Air Act Amendments of 1990.

Dated: June 19, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91–15054 Filed 6–24–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3967–6]

Clean Air Act Advisory Committee; Open Meetings

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, 46993, No. 217). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on July 25, 1991 from 8:30 a.m. to 4 p.m., at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis but should be fully adequate for all members of the public interested in attending.

The meeting will include a discussion of the status of Clean Air Act implementation efforts, the role of voluntary air pollution reduction and pollution prevention opportunities in the Clean Air Act.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public

inspection in EPA Air Docket No. A–90–39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington, DC. Hours of inspections are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

ADDITIONAL MEETING DATES: The next scheduled meeting dates for the CAAC are: October 24, 1991 and January 16, 1992. These meetings will also be held at the Washington Hilton Hotel.

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382–7430, FAX (202) 245–4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR–443), Office of Air and Radiation, Washington, DC 20460.

Dated: June 18, 1991.

Jerry Kurtzweg,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91–15059 Filed 6–24–91; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board; Ecological Processes and Effects Committee and Environmental Engineering Committee; Open Meetings; July 16–18, 1991

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two meetings of the Science Advisory Board will be held in tandem at the U.S. EPA Environmental Research Laboratory, 200 SW 35th St., Corvallis, OR 97333. The first meeting will be a review of Wetlands Research by the Wetlands Research Subcommittee of the Ecological Processes and Effects Committee. This meeting will start at 8:30 a.m. on July 16, and will adjourn no later than 2 p.m. July 17. The second meeting will be a review of research for constructed wetlands by the Constructed Wetlands Subcommittee of the Environmental Engineering Committee. This meeting will begin at 3 p.m. on July 17 and will adjourn no later than 5 p.m. on July 18, 1991. Both meetings are open to the public. Seating will be on a first come basis.

The main purpose of the first meeting is to review a Five Year Research Plan for Wetlands Research that has been developed by the Agency's Office of Research and Development. This research is intended to support the on-going needs of the regulatory programs within the Office of Water. Copies of the relevant EPA documents pertaining to the wetlands research review are available from Dr. Eric Preston at the EPA Corvallis Laboratory, (503) 757–4601.

The main purpose of the second meeting is to review the Agency's research plan for constructed wetlands and to provide advice on the broad spectrum of engineering, ecological and environmental issues which play a role in constructed wetlands activities. Copies of the relevant EPA documents pertaining to the constructed wetlands review are available from Mr. Donald Brown at the EPA Cincinnati, Ohio Laboratory (513) 569–7630.

Agendas for both meetings are available from Mrs. Marcy Jolly, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202–382–2552). Members of the public desiring additional information should contact either Dr. Edward S. Bender, Designated Federal Official, Ecological Processes and Effects Committee, or Dr. K. Jack Kooyoomjian, Designated Federal Official, Environmental Engineering Committee by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. July 8, 1991. Anyone wishing to make a presentation at the meeting should forward a written statement to the appropriate Designated Federal Official by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 11, 1991.

Sam R. Rodenberg,

Acting Director, Science Advisory Board.

[FR Doc. 91–15055 Filed 6–24–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3968–2]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on July 17–18, 1991 at the One Washington Circle Hotel, One Washington Circle NW., Washington DC 20037. The hotel telephone number is (202) 872–1680.

The meeting will start at 9 a.m. on July 17, and will adjourn no later than 5 p.m. July 18, and is open to the public. The main purpose of this meeting is to review the draft document "Formaldehyde Risk Assessment Update," developed by the Agency's Office of Toxic Substances (The review will address several issues, including the weight-of-evidence support for classifying formaldehyde as a probable human carcinogen (Category B 1), the use of DNA protein cross-link data in the risk assessment of formaldehyde, and the use of the available epidemiological data). Copies of the formaldehyde document, and technical information on this topic may be obtained from Dr. Mary Henry (CTS 796) U.S. EPA, Office of Toxic Substances, 401 M St., SW., Washington DC 20460 (Telephone number 202–382–4301). This document is not available from the Science Advisory Board.

On day two of the meeting (July 18), the Committee will discuss plans and subjects for reviews to be carried out during Fiscal Year 1992, and will consider what specific skills and disciplines might be added to the Committee membership to support the planned reviews.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environment Protection Agency, Washington DC 20460 (202–382–2552). Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Executive Secretary and Designated Federal Official, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by July 8, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 18, 1991.

Sam Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 91–15056 Filed 6–24–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44572; FRL 3930–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,1,1-trichloroethane (CAS No.71–55–6), submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 544–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submission

Test data for 1,1,1-trichloroethane were submitted by the Halogenated Solvents Industry Alliance pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on May 28, 1991. The submission describes the neurotoxicologic examination of rats exposed to 1,1,1-trichloroethane vapor for 13 weeks. Health effects testing is required by this test rule. This chemical is used as a cleaning stabilizer.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44572). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 18, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–15064 Filed 6–24–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Port Authority of New York and New Jersey; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003930–004.

Title: Port Authority of New York & New Jersey/Universal Maritime Services Corp. Terminal Agreement.

Parties: Port Authority of New York & New Jersey, Universal Maritime Services Corp. (UMS).

Synopsis: The Agreement, filed June 17, 1991, amends the basic agreement to provide the terms for UMS' construction of a certain facility at the Red Hook Container Terminal and to revise the parties' termination rights.

Dated: June 20, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15085 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

American Transport Lines, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010386–017.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Van Nievelt, Goudriaan & Co., (Holland Pan American Line), Reefer Express Lines Pty., Ltd., Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would delete Van Nievelt, Goudriaan & Co. (Holland Pan American Line) and Reefer Express Lines Pty., Ltd. as parties to the agreement. It would also adjust pool shares among the remaining parties as required by the withdrawal provisions of the Agreement.

Agreement No.: 212–010386–018.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would provide criteria for crediting a party's sailing obligations when carrying cargo under space charter, and it would clarify that charter revenue earned from space charter will not be subject to the pool.

Agreement No.: 212–010386–019.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would delete provisions of the Agreement which conflict with the Commission's rules concerning the notice and waiting period required prior to the effectiveness of agreement modifications.

Agreement No.: 212–010386–020.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A Bottacchi S.A. de Navegacion C.F.I.I., Companhia de

Navegacao Lloyd Brasileiro, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would provide additional detail with respect to the procedure (and liability) for chartering space as permitted under the authority of the agreement and require semi-annual reporting to the Commission on the space chartering activity undertaken pursuant to this authority. The proposed amendment would also permit the parties to agree upon the deployment, scheduling and utilization of their vessels subject to this Agreement, and to cooperate with respect to shoreside services.

By Order of the Federal Maritime Commission.

Dated: June 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15002 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

The Board of Commissioners of New Orleans, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments one each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–200533.

Title: The Board of Commissioners of the Port of New Orleans/Dupuy Storage & Forwarding Corporation.

Parties: The Board of Commissioners of the Port of New Orleans (Board); Dupuy Storage & Forwarding Corporation (Dupuy).

Filing Party: Ms. Julia Ann Berrone; Staff Attorney, Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement, filed June 17, 1991, provides for the Board to lease to Dupuy 60,800 square feet or the Perry Street Wharf facility for a period of two years. Dupuy shall use the facility for the loading and unloading of cargo from vessels, barges, and other watercraft, warehousing, stevedoring and related purposes; and pay the Board a base rent of $91,200.00 for the first year with a five percent increase beginning the second year. All applicable charges except for demurrage and sheddage charges shall be paid in accordance with the Board's Dock Department Tariff.

By Order of the Federal Maritime Commission.

Dated: June 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15000 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

The Port of Palm Beach District, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200534.

Title: The Port of Palm Beach District/Grundstad Terminals, Inc. Terminal Agreement.

Parties: The Port of Palm Beach District (Port); Grundstad Terminals, Inc. (GT).

Synopsis: The Agreement, filed June 17, 1991, provides for: (1) GT to lease two spaces in a building, a 1,510 square feet finished space, and a 1,585 square feet unfinished space; (2) GT to pay the Port a total annual base rental of $36,915 for each fiscal year of the lease, subject to an annual increase based on the Cost of Living Index; and (3) GT to pay its proportionate share of all the operating expenses, including utility costs, of the building. The term of the Agreement expires on September 30, 1999.

By Order of the Federal Maritime Commission.

Dated: June 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15001 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

B & A Brokers, Inc.
150 Grossman Drive, suite 203
Brainfree, MA 02184
Officers: Brenda L. Madden, President, Anne E. Kerr, Secretary

Customs Services, Inc
1358 Northwest 78th Ave.
Miami, FL 33166
Officers: James J. Smith, Jr., President, Samuel Gonzalez, President/Director

ABcom International Transportation & Trading Co.
15272 Bolsa Chica Road
Huntington Beach, CA 92049
Officers: John H. Tillotson, President/Chairman, Haydee Tillotson, Vice President/Director, Sharlene Jacobsen, Secretary

ETA Import & Export Ltd.
248–06 Rockaway Blvd.
Jamaica, NY 11422
Officers: Sheldon Stowe, President, Arthur Stein, Vice President/Secretary, Benjamin Vitale, Vice President

Transport Express Corporation
5613 Leesburg Pike #29
Alexandria, VA 22312
Officers: Ahmad T. Solaiman, President, Daad M. Solaiman, Secretary/Treasurer

Southside Shipping, Ltd.
345 Leffert Avenue
Brooklyn, NY 11225
Officers: Augnacious Wharton, President/Director/Stockholder, Anna West, Secretary

Respond Cargo Services Corporation

757 Kenrick, suite 108
Houston, TX 77080
Officers: Benjamin Charles Bengert, President/CEO Director, T.L. Hicks, Vice President/Director
Export Trade Service
104 Brook Way
Dalton, GA 30720
Patricia Ann Walls, Sole Proprietor
Rachel Ashley International
9412 E. 65th St., #1910
Tulsa, OK 74133
John R. Soares, Sole Proprietor
Acts Custom Brokers
18500 Lee Road, suite J
Humble, TX 77338
Lavone W. McClellan, Sole Proprietor
Banks Air Freight Service, Inc.
P.O. Box 8750
BWI Airport, MD 21240
Officers: Judith M. Banks, President, Charles W. Banks, Jr., Vice President/Secretary, Michelle Sauerhoff, Treasurer
"J.I.F." Jet International Forwarding, Inc.
4420 NW 73rd Avenue
Miami, FL 33166
Officers: Francisco D. Ferrey, President, Maria A. Ferrey, Secretary, Christina Santana, Vice President

Dated: June 19, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-15003 Filed 6-24-91; 8:45 am]

BILLING CODE 6730-01-M

Tariffs of Certain Common Carriers by Water; Suspension

This is to give Notice that the Commission is suspending the tariffs (listed in the attachment) of certain common carriers by water operating in the United States trades for twelve months effective June 19, 1991.

On May 20, 1991, the Commission issued an Order adopting, and remanding in part the Initial Decision in Docket No. 89-27, *Martyn Merritt, AMG Services, Inc. d/b/a Ariel Maritime Group and Ariel Maritime, Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines-Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984.* That Order directed that the tariffs of Oasis Express Line, Javelin Line, Coast Container Line*, Trans AfricaLine, Buccaneer Line*, and Union Exportadora Lines* be suspended for a period of twelve months. This suspension is effective June 19, 1991. The Commission also ordered that no respondent, officer, employee, agent, subsidiary, division or successor of any respondent in Docket No. 89-27 may file any tariff to provide transportation of cargo by water between the United States and any foreign country for a period of twelve months.

Finally, the Commission directed that any tariff which is found to provide any continuation of services offered by any respondent, subsidiary, division or successor to any respondent shall likewise be suspended during the twelve month period.

For further information concerning this matter contact Bryant L. VanBrakle, Acting Director, Bureau of Domestic Regulation at (202) 523-5796.

Joseph C. Polking,

Secretary.

Tariffs To Be Suspended*

Maritimo Comercio Empresa S.A.
dba Oasis Express Line
FMC-4
Maritimo Comercio Empresa S.A.
dba Oasis Express Line
FMC-5
Maritimo Comercio Empresa S.A.
dba Javelin Line
FMC-6
Maritimo Comercio Empresa S.A.**
dba Javelin Lines
FMC-7
Maritimo Comercio Empresa S.A.**
dba Trans Africa Line
FMC-1
Maritimo Comercio Empresa S.A.**
dba Trans Africa Line
FMC*

[FR Doc. 91-15004 Filed 6-24-91; 8:45 am]

BILLING CODE 6730-01-M

*Certain tariffs published by Sterling Maritime Ltd. dba Coast Container Line (FMC-1 & 3), Sterling Maritime Ltd. dba Union Exportadora Lines (FMC-5) and Charles Klaus and Co. Ltd. dba Buccaneer Line (FMC-1) were voluntarily cancelled in April, 1991.

*Since certain tariffs published by Sterling Maritime Ltd. dba Coast Container Line (FMC-1 & 3), Sterling Maritime Ltd. dba Union Exportadora Lines (FMC-5), and Charles Klaus and Co. Ltd. dba Buccaneer Lines (FMC-) were voluntarily cancelled, they are not included in this list.

**There are slight differences between the carrier names on the two Maritimo Comercio Expresa S.A. dba Javelin Line tariffs as well as on the two tarifss of Maritimo Comercio Empresa S.A. dba Trans Africa Line. The title page of Javelin FMC-6 indicates that Javelin Line is the trade name, while on FMC-7 Javelin Lines is shown as the trade name. The title page of Trans Africa FMC-1 shows Commercio being spelled with one "m," while Commercio appears with two "mm's" on the title page of FMC-2.

FEDERAL TRADE COMMISSION

[File No. 911-0040]

Alpha Acquisition Corp., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, RWE, a corporation based in Germany, to grant the required technology license, and establish other required agreements, subject to prior Commission approval, within six months of the date of the final order, or else consent to the appointment of a trustee to effectuate these requirements. In addition, for ten years, RWE would be required to obtain prior FTC approval before acquiring any entity that manufactures, distributes, or sells high-purity alumina, with sales in the U.S. of 125,000 pounds or more in any six-month period.

DATES: Comments must be received on or before August 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S-3302, Washington, DC 20580. (202) 326-2622.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(i) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by Alpha Acquisition Corp., a wholly-owned subsidiary of RWE-DEA Aktiengesellschaft fur Mineraloel und Chemie, which in turn is a partially-

owned subsidiary of RWE Aktiengesellschaft (hereinafter collectively "RWE"), of all of the issued and outstanding common stock of Vista Chemical Company (hereinafter "Vista"), which acquisition is more fully described at paragraph 6 below, and RWE and Vista having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge RWE and Vista with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that RWE and Vista are willing to enter into an agreement containing an order to make available through license certain patents, technology, and knowhow, to cease and desist from certain acts and providing for other relief:

It is hereby agreed by and between RWE, by its duly authorized officers, and counsel for the Commission and by and between Vista, by its duly authorized officers, and counsel for the Commission that:

1. Proposed respondent Alpha Acquisition Corp. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at Uberseering 40, 2000 Hamburg 60, Federal Republic of Germany.

2. Proposed respondent RWE-DEA Aktiengesellschaft fur Mineraloel und Chemie is a corporation organized and existing under the laws of Germany, with its principal office and place of business at Uberseering 40, 2000 Hamburg 60, Federal Republic of Germany.

3. Proposed respondent RWE Aktiengesellschaft is a corporation organized under the laws of Germany, with its principal office and place of business at Kruppstrasse 5, 4300 Essen 1, Federal Republic of Germany.

4. Proposed respondent Vista Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 900 Threadneedle, Houston, Texas 77224.

5. RWE and Vista admit all the jurisdictional facts set forth in the attached draft of complaint. This admission is solely for the purposes of this agreement, the order contemplated by this agreement, any modification of the order or other proceeding related to the order, any action relating to a possible violation of this agreement or the order contemplated by this agreement, or any action relating to a possible violation of any law administered or enforced by or on behalf of the Commission in connection with the Acquisition (as hereinafter defined).

6. On December 13, 1990, RWE and Vista entered into an Agreement and Plan of Merger whereby RWE would make a tender offer to purchase all of the issued and outstanding shares of Common Stock of Vista (hereinafter the "Acquisition").

7. RWE and Vista each waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

8. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify RWE and Vista, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

9. This agreement is for settlement purposes only and does not constitute an admission by RWE or Vista that the law has been violated as alleged in the draft of complaint hereto attached.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to RWE and Vista, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to cease and desist, which also provides for the licensing of certain technology and other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to RWE counsel, and to Vista's address as stated in this agreement shall constitute service. RWE and Vista each waives any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

11. RWE and Vista have each read the draft of complaint and Order contemplated hereby. RWE and Vista each understands that once the Order has been issued, each will be required to file one or more compliance reports showing that each has fully complied with the Order. RWE and Vista each further understands that each may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

(A) *Acquisition* means the agreement and Plan of Merger entered into on December 13, 1990, by which RWE agreed to make a tender offer for all of the issued and outstanding shares of Vista common stock.

(B) *Alumina Joint Venture* means the joint venture established pursuant to either paragraphs IV or VI of this Order, between RWE and the Licensee.

(C) *Automotive Emissions Control Catalysts* means catalysts that are employed to provide a catalytic process to control the release of emissions in automotive systems.

(D) *Chemical Catalysts* means catalysts that are useful in chemical synthesis processes, excluding catalysts used solely for petroleum refining applications other than (1) catalytic reforming catalysts, (2) isomerization catalysts, and (3) any other petroleum refining catalyst applications which Vista internally delineates as chemical catalyst applications for purposes of alumina pricing.

(E) *Commission* means the Federal Trade Commission.

(F) *Construct* includes the building of a new facility or modifying of an existing facility.

(G) *High-Purity Alumina* means all grades and types of alumina produced or sold by Vista as of the date that this

Order is accepted by the Commission for public comment.

(H) *Hold Separate Agreement* means the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I.

(I) *Joint Venture Alumina* means all grades and types of Catapal B and Catapal CF, other grades of Vista alumina used in Chemical Catalysts and Automotive Emission Control Catalysts, and alumina slurry which the joint venture may use, directly or indirectly, exclusively for the production of Sol Gel Abrasives, in each case manufactured by Vista at its Lake Charles plant as of the date of this Order is accepted by the Commission for public comment.

(J) *Lake Charles Plant* means Vista's alcohol-alumina co-production facility located at Vista's Lake Charles Chemical Plant, Old Spanish Trail Road, Westlake, Louisiana.

(K) *Licensee* means the person licensed pursuant to paragraphs II, III, or VI of this Order.

(L) *License Agreements* means the Vista Agreement and RWE License Agreement.

(M) *North America* means the United States and its territories and possessions.

(N) *On-purpose* refers to a plant the principal output of which is alumina or alumina alkoxide.

(O) *Or* includes "any" and may have either disjunctive or conjunctive meaning; provided, however, that in sentences where "or" is preceded by "either," "or" has only disjunctive meaning.

(P) *Precipitated Alumina* means alumina obtained generally by precipitating dissolved aluminum trihydrate (also known as "gibbsite"), then usually followed by filtering, washing and spray-drying the resulting alumina.

(Q) *RWE* means RWE Aktiengesellschaft, RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie, and Alpha Acquisition Corp., their predecessors, subsidiaries, divisions, groups and affiliates controlled by RWE Aktiengesellschaft, RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie, and Alpha Acquisition Corp., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(R) *RWE License Agreement* means a License Agreement pursuant to which RWE Technology and RWE Patent Rights are licensed to the Licensee in accordance with paragraphs II, III, or VI of this Order.

(S) *RWE Patents Rights* means any patent existing or patent application pending, in each case as of the date that this Order is accepted by the Commission for public comment, in the United States relating to RWE's process for On-purpose production of aluminum alkoxide for use in High-Purity Alumina, or similar aluminas. For the purposes of this definition, RWE excludes Vista.

(T) *RWE Tecnology* means all general and specific information known to RWE prior to the date this Order is accepted by the Commission for public comment, relating to: (1) Design, construction, and operation of an On-purpose aluminum alkoxide production facility and (2) production of aluminum alkoxide at an On-purpose facility producing High-Purity Alumina or similar alumina, in each case including (but not limited to) all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operation manuals, and formulations. For purposes of of this definition, RWE excludes Vista.

(U) *Sol Gel Abrasives* means the class of abrasives or abrasive grains that employ high dispersible alumina as a raw material, and are used in certain industrial processing applications.

(V) *Vista* means Vista Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Vista and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(W) *Vista License Agreement* means a License Agreement pursuant to which Vista Technology and Vista Patent Rights are licensed to the Licensee in accordance with paragraphs II, III, or VI of this Order.

(X) *Vista Patent Rights* means any Vista patent or patent application pending, in each case, as of the date that this Order is accepted by the Commission for public comment, in the United States relating to the production of or applications for Vista's High-Purity Alumina except thickeners, ceramics (excluding Sol Gel Abrasives), and aluminas not produced in commercial quantities (excluding Sol Gel Abrasives).

(Y) *Vista Technology* means all general and specific information known the Vista prior to the date this Order is accepted by the Commission for public comment relating to: (1) Design, construction, and operation of an On-purpose High-Purity Alumina production facility, (2) production at an On-purpose High-Purity Alumina production facility of High-Purity Alumina, except thickeners and ceramics (excluding Sol Gel Abrasives), and aluminas not produced in commercial quantities (excluding Sol Gel Abrasives), and (3) the processing of aluminum alkoxide or alumina slurry into all grades of alumina powder, alumina sol or colloidal alumina for use in all applications except thickeners, ceramics (excluding Sol Gel Abrasives), and aluminas not produced in commercial quantities (excluding Sol Gel Abrasives). Such technology shall include, but shall not be limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and formulations.

II

It is ordered That not later than six (6) months after the date this Order becomes final, RWE shall, absolutely and in good faith, grant a perpetual license of Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights for the purposes of producing in North America and marketing High-Purity Alumina or similar aluminas to a person that obtains the prior approval of the Commission and only in a manner and pursuant to License Agreements that receive the prior approval of the Commission. Such License Agreements shall permit the Licensee to (1) design, construct or operate one On-purpose alumina production facility utilizing the RWE Technology or RWE Patent Rights and one or more alumina production facilities utilizing the Visa Technology or Vista Patent Rights and (2) enter into a joint venture or other arrangement controlled by the Licensee with any partners for the purpose of designing, constructing, financing or operating alumina production facilities; provided, however, if at any time after three (3) years from the date of the formation of the Alumina Joint Venture the Licensee has not commenced construction of an alumina production facility, then the Licensee may (i) sublicense to a third party (the "Minority Partner") the right to design, construct, or operate one alumina production facility and (ii) enter into a joint venture or other arrangement controlled by the Licensee with the Minority Partner for the exclusive purpose of selling and marketing all or substantially all the alumina produced by the alumina production facility designed, constructed, or operated by the Minority Partner pursuant to such sublicense, subject, in each case, to the approval of RWE, which approval shall not be unreasonably withheld; provided, further, that RWE need not approve such sublicense unless the Licensee enters into a joint venture or other

arrangement pursuant to clause (ii) above and agrees to forgo the construction of any alumina production facility during the term of the Alumina Joint Venture unless the sublicense is terminated prior to the construction or operation of the Minority Partner's alumina production facility. The purpose of granting such License Agreements is to establish the licensee as a viable competitor in the market for High-Purity Alumina or similar aluminas and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Nothing in this Order shall prohibit the License Agreements from containing the following provisions:

(A) A provision prohibiting assignment before construction of an alumina production facility; provided, however, that the Licensee may assign all of its rights under both License Agreements (1) to any person who is under the control of the owners of such Licenses and, if the Alumina Joint Venture has not been terminated prior to such assignment, to the managing partner of the Alumina Joint Venture, or (2) to any party, approved by RWE, which approval shall not be unreasonably withheld, to whom the Licensee shall also sell its interest in the Alumina Joint Venture pursuant to paragraph IV. (G) of this Order. The party so approved for the assignment shall thereafter be the "Licensee" pursuant to this Order.

(B) A provision prohibiting assignment of the License Agreements after the construction of one or more alumina production facilities described in paragraph II of this Order except by the Licensee to (1) any person who is under the control of the owners of such Licenses or (2) any owners of each such alumina production facility; provided, however, that in no event may any License Agreement be assigned to a person who does not own an alumina production facility utilizing applicable technology and patent rights licensed under such License Agreement in accordance with paragraph II of this Order.

(C) A provision prohibiting the Licensee from disclosing Vista Technology, Vista Patent Rights, RWE Technology or RWE Patent Rights to any non-licensee, except if such non-licensee needs to know, and agrees to restrict the use of, such information for the purpose of designing, constructing, financing the construction of, or operating one or more alumina production facilities.

It is Further Ordered That, in the event the first Licensee who has held the Licenses for four (4) years either does not, within four (4) years of the date of the grant of the licenses set out in paragraph II of this Order, commence construction of an alumina production facility utilizing RWE Technology, RWE Patent Rights, Vista Technology or Vista Patent Rights, or does not complete construction within six (6) years of the date of the grant of the licenses set out in paragraph II of this Order, or the Alumina Joint Venture terminates for any reason other than those set out in paragraph IV.(A) of this Order ("failure dates"), RWE shall grant new licenses, or shall cause the granting of new licenses, to a new Licensee within six (6) months of the first such failure date, under the terms and conditions set out in paragraph II of this Order and may terminate the perpetual licenses granted under paragraph II of this Order.

IV.

It is Further Ordered That at the same time it grants the licenses under paragraph II of this Order, RWE shall absolutely and in good faith, enter into an Alumina Joint Venture and an agreement to supply Joint Venture Alumina consistent with paragraphs IV. (A) through IV.(M) of this Order with a Licensee that obtains the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purposes of the Alumina Joint Venture and supply agreement are to impart the practical, technological and business skills the Licensee may need to produce and sell High-Purity Alumina or similar aluminas, to establish the Licensee as a viable competitor in the market for High-Purity Alumina or similar aluminas, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(A) The initial term of the Alumina Joint Venture shall be four (4) years; provided, however, the Alumina Joint Venture term shall be extended at the request of the Licensee for two (2) additional years if the Licensee has started construction of a High-Purity Alumina or similar alumina manufacturing facility within the first four (4) years; provided, further, the Alumina Joint Venture shall in all events terminate no later than sixty (60) days after the Licensee has finished construction and commenced commercial operation of either (1) an alumina production facility utilizing the Vista Technology, Vista Patent Rights, RWE Technology or RWE Patent Rights or (2) a Precipitated Alumina production facility.

(B) Upon thirty (30) days prior notice to the Commission, RWE also may terminate the Alumina Joint Venture agreement, the supply agreement, or the License Agreements due to the bankruptcy, insolvency or receivership of the Licensee or the Alumina Joint Venture or material breach of any such agreement by the Licensee. If the Alumina Joint Venture terminates for any reason other than those set out in paragraph IV. (A) of this Order, RWE shall, within six (6) months of the termination of the Alumina Joint Venture, either cause the Licensee to assign its rights, title and interest in the Alumina Joint Venture to a new Licensee with the prior approval of the Commission, or shall form a new Alumina Joint Venture with a new Licensee under the terms and conditions of paragraphs II–IV of this Order.

(C) Any material breach of the License Agreements, the Alumina Joint Venture agreement, or supply agreement by RWE shall constitute a violation of this Order. In the event that the Alumina Joint Venture terminates due to the breach of RWE, then within six (6) months of the termination, RWE shall form a new Alumina Joint Venture with a Licensee under the terms and conditions of paragraphs II–IV of this Order.

(D) The Licensee either shall be the managing partner of the Alumina Joint Venture, or otherwise have the managing responsibility for day-to-day administrative control of the Alumina Joint Venture and with the authority to make all marketing, pricing and other decisions not specifically delegated to the management committee or subject to the approval of the limited or minority partner as set out in the Alumina Joint Venture agreement that receives the prior approval of the Commission. The Licensee shall be reimbursed by the Alumina Joint Venture for all accounting, tax and other administrative services it provides.

(E) Alumina Joint Venture may have a management committee. The Licensee shall designate a majority of the members of the management committee. The management committee may consider and decide issues concerning substantial borrowing, contractual obligations, capital expenditures, disposition of assets, incurring of administrative expenses, incurring of research and development expenses, incurring working capital obligations, and the maintenance of reserves.

(F) The Licensee shall own a 51% interest in the Alumina Joint Venture. That interest shall increase to the extent the Licensee makes disproportionate capital contributions to the Alumina Joint Venture.

(G) The Licensee may sell its interest in the Alumina Joint Venture only to a party approved by RWE, which approval shall not be unreasonably withheld, with the prior approval of the Commission; provided, however, that the License Agreements are assigned to such party.

(H) RWE shall make available to the Alumina Joint Venture all Vista customer-specific marketing information, including copies of Vista customer files, as of the date that this Order is accepted by the Commission for public comment, relating to Chemical Catalysts, Automotive Emissions Control Catalysts, and Sol Gel Abrasives (including prospective North American customer files relating to such abrasives), except to the extent that a customer prohibits disclosure of information provided to Vista pursuant to a confidentiality agreement, or that a customer prohibits disclosure of information provided to Vista on the basis that such information constitutes such customer's trade secrets. RWE shall use its best efforts to secure authority from customers to provide such information to the Licensee. The Licensee may disclose any information made available by RWE to the Alumina Joint Venture pursuant to this paragraph IV.(H) (other than information independently known to Licensee on a non-confidential basis from sources other than RWE) only to a person who needs to know, and agrees to use, such information for the purpose of designing, constructing, financing the construction of, or operating one or more alumina manufacturing facilities in a manner consistent with paragraph II of this Order. At the request of the Licensee, RWE shall provide engineering services and customer technical services, from its North American operations, during the term of the Alumina Joint Venture. In addition, RWE shall provide to the Alumina Joint Venture, at the request of the Licensee, marketing, logistics and distribution personnel, from its North American operations, for no more than six months after the establishment of the Alumina Joint Venture. RWE shall be reimbursed by the Alumina Joint Venture for the services and personnel it provides. If, at the end of Alumina Joint Venture term, the Licensee has employed the license to construct a facility for the manufacture of High-Purity Alumina or similar alumina, the file and information provided to or generated by the Alumina Joint Venture pursuant to this Paragraph shall become the property of the Licensee.

(I) RWE shall supply the Alumina Joint Venture with grades and types of Joint Venture Alumina in the quantities the Licensee specifies. In the initial year of the Alumina Joint Venture, RWE shall supply up to [the specified volume] of Joint Venture Alumina. Thereafter, until the expiration of the Alumina Joint Venture, RWE's supply obligation shall increase by [the specified number of] pounds per year, but in all events, its total obligation shall not exceed [the specified volume] of Joint Venture Alumina. RWE is not required to provide more than ten (10) percent of the supply obligation in the form of alumina slurry. The quality of the alumina slurry supplied shall be comparable to that used by Vista, on or before the date this Order is accepted by the Commission for public comment, to produce test quantities of alumina for Sol Gel Abrasive applications. There shall be no limitations on the applications for which the Alumina Joint Venture may sell Joint Venture Alumina, except as provided in paragraph I.(I) of this Order.

(J) In connection with the formation of the Alumina Joint Venture, RWE shall, on an expedited basis, use its best efforts to assign to the Alumina Joint Venture all Vista customers and contracts, as of the date that this Order is accepted by the Commission for public comment, pertaining to Joint Venture Alumina used in Chemical Catalysts and Automotive Emissions Control Catalysts. Without the consent of the Licensee, RWE shall not supply customers assigned to the Alumina Joint Venture with any Joint Venture Alumina manufactured in North America, other than alumina for Sol Gel Abrasives.

(K) The base price of the alumina or alumina slurry supplied to the Alumina Joint Venture shall be [the specified price]; provided, however, that the pricing formula may contain reasonable adjustments for inflation.

(L) No RWE employee on the management committee or assigned to the Alumina Joint Venture on a temporary basis shall disclose to RWE "material confidential information" relating to the Alumina Joint Venture's assets and businesses not in the public domain, except as such information would be available to RWE in the normal course of business. "Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to RWE from sources other than the Alumina Joint Venture, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets. If upon dissolution of the Alumina Joint Venture, the Licensee is not operating or is not in control of a joint venture or other arrangement that is operating an alumina production facility pursuant to a License Agreement (or is not in control of a joint venture or other arrangement that will market and sell the output of an alumina production facility that has been constructed pursuant to a sublicense permitted by paragraph II of this Order), all marketing, research and development and technical services files created by the Alumina Joint Venture or transferred pursuant to paragraph IV.(H) of this Order will become the exclusive property of RWE.

(M) RWE shall neither restrict nor limit the ability of the Alumina Joint Venture or the Licensee to hire personnel employed by Vista as of the date this Order is accepted by the Commission for public comment or thereafter; provided, however, RWE may enforce existing confidentiality agreements covering information outside the scope of Vista Technology and Vista Patent Rights, and the RWE Technology and RWE Patent Rights.

V

It is Further Ordered That:

(A) RWE shall not, without prior approval of the Commission, make or agree to any modifications to the License Agreements, Alumina Joint Venture agreement, or agreement to supply Joint Venture Alumina or any other instruments approved by the Commission pursuant to this Order, other than those modifications permitted by the License Agreements, Alumina Joint Venture agreement, or agreement to supply Joint Venture Alumina or any other instruments approved by the Commission pursuant to this Order.

(B) RWE shall provide to the Commission, as promptly as possible and in any event no later than thirty (30) days after either their receipt or transmittal, copies of all communications between RWE and the Licensee or Alumina Joint Venture regarding breaches of the License Agreements, Alumina Joint Venture agreement, or agreement to supply Joint Venture Alumina or any other instruments approved by the Commission pursuant to this Order.

VI

It Is Further Ordered That:

(A) If RWE has not licensed the RWE Technology, RWE Patent Rights, Vista Technology and Vista Patent Rights absolutely and in good faith and with the Commission's approval as set out in paragraphs II and III of this Order, and established the Alumina Joint Venture and supply agreement as set out in

paragraph IV of this Order, within six (6) months of the date this Order becomes final, or within six months of the first to occur of a failure date as set out in paragraph III of this Order, or within six (6) months of the date the Alumina Joint Venture terminates as set out in paragraph IV.(B) or IV.(C), (i) RWE shall consent to the appointment by the Commission of a trustee or (ii) in the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, RWE shall consent to the appointment of a trustee in such action. In each case, the trustee shall be authorized to license the Vista Technology, Vista Patent Rights, the RWE Technology, and RWE Patent Rights, consistent with the provisions of Paragraph II of this Order, and, unless the Alumina Joint Venture has terminated pursuant to paragraph IV.(A) of this Order, establish an Alumina Joint Venture and supply agreement consistent with the provisions of paragraph IV of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by RWE to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph VI.(A) of this Order, RWE shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of RWE, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions, diverstitures and licensing agreements.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to license the Vista Technology, Vista Patent Rights, RWE Technology and RWE Patent Rights, on terms and conditions consistent with paragraph II of this Order and such license shall contain the provisions contained in paragraphs II.(A), II.(B) and II.(C) of this Order.

3. If applicable, the trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to establish the Alumina Joint Venture and supply agreement on terms and conditions consistent with paragraph IV of this Order. The Alumina Joint Venture agreement shall provide that without the consent of the limited or minority partner neither the managing partner nor the management committee may take any of the following actions: (a) Enter into contracts with, or in favor of, Licensee or any of its respective affiliates; (b) transfer, sell or dispose of any of the Alumina Joint Venture's assets (other than the sale of alumina in the ordinary course of business) or merge the Alumina Joint Venture with another entity; (c) require the limited partner to make any capital contribution (net of aggregate cash distributions to the limited partner) in excess of $500,000; (d) admit any other person as a partner; (e) execute or deliver any general assignment for the benefit of creditors of the Alumina Joint Venture or file a voluntary petition in bankruptcy on behalf of the Alumina Joint Venture or fail to contest the filing of any involuntary petition in bankruptcy against the Alumina Joint Venture (or involving a substantial portion of its assets) within a reasonable time.

4. The trustee shall have twelve (12) months from the date of appointment to license the Vista Technology, Vista Patent Rights, RWE Technology and RWE Patent Rights, and, if applicable, establish the Alumina Joint Venture and supply agreement. If, however, at the end of the twelve-month period the trustee has submitted a plan to accomplish these objectives, or believes that they can be accomplished within a reasonable time, the Commission may extend the period.

5. The trustee shall have full and complete access to the personnel, books, records and facilities necessary to fulfill the trustee's obligations. RWE shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. RWE shall take no action to interfere with or impede the trustee's licensing of the technology and, if applicable, the establishment of the Alumina Joint Venture and supply agreement. Any delays caused by RWE shall extend the time under this pagraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

6. Consistent with RWE's absolute and unconditional obligations under paragraph II and paragraph IV of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with the Licensee, consistent with the provisions of paragraph II and paragraph IV of this Order and the trustee's obligations under paragaph VI of this Order.

7. The trustee shall serve, without bond or other security, at the cost and expense of RWE, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of RWE, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived or received from the new Licensee and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of RWE and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the objectives set out in paragraph VI.(A) of the Order.

8. RWE shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VI.(A) of this Order.

10. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, RWE either shall execute a trust agreement or shall cause the execution of a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to license the Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights and, if applicable, establish the Alumina Joint Venture and supply agreement required by this Order.

11. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions not inconsistent with paragraphs II, IV, or VI of this Order as may be necessary or appropriate to license the Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights and, if applicable, set up the Alumina

Joint Venture and supply agreement required by this Order.

12. The trustee shall report in writing to RWE and to the Commission every sixty (60) days concerning the trustee's efforts to license the Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights and, if applicable, set up the Alumina Joint Venture and supply agreement.

VII

It is Further Ordered That:

(A)(1) within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until RWE has received the prior approvals of the Commission pursuant to paragraphs II and IV of this Order and (2) within sixty (60) days after the date any obligation of RWE arises under paragraphs III, IV. (B), or IV.(C) of this Order and every sixty (60) days thereafter until RWE has received the prior approvals required by paragraphs II and IV, RWE shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with the Order. RWE shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations concerning licensing the technology or establishing the Alumina Joint Venture and supply agreement, including the identity of all parties contacted. RWE also shall include in its compliance reports copies of all written communications to and from such parties, memorializations of all oral communications, all internal memoranda, and reports and recommendations concerning licensing, joint ventures or supply agreements.

(B) One year from the date this Order becomes final and annually for the period of the Alumina Joint Venture and supply agreement, as set out in paragraph IV of this Order, RWE shall file a verified written report setting forth in detail the manner and form in which it is complying with the requirements of paragraph IV. RWE shall include in its reports a full description of the Alumina Joint Venture and its own participation, including its ownership share of the Alumina Joint Venture, the profits it has obtained from the Alumina Joint Venture, and any financial or other information that RWE has obtained from the Alumina Joint Venture. RWE shall also include in its reports a full description of the volumes of High-Purity Alumina or similar alumina specified by the Licensee on behalf of the Alumina Joint Venture, the pricing of alumina to the Alumina Joint Venture (including any price change and the reasons for), and any product performance deficiencies identified by the managing partner. RWE shall further include in its reports copies of all written correspondence between itself and the Alumina Joint Venture or the managing partner and the minutes of management committee meetings.

VIII

It is Further Ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, RWE shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets located anywhere in the world used for the production, distribution or sale of High-Purity Alumina or similar alumina in or into North America in an amount exceeding 125,000 pounds in any six (6) month period in the 36 months prior to the application. RWE also shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any interest in, or the stock or share capital of any entity that owns or operates assets located anywhere in the world engaged in the production, distribution or sale of High-Purity Alumina or similar alumina that were consumed in North America in any six (6) month period in the 36 months prior to the application; provided, however, these prohibitions shall not relate to the construction of new facilities., One year from the date this Order become final and annually for none years thereafter, RWE shall file with the Commission a verified written report of its compliance with this paragraph.

IX

It is Further Ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to RWE as practicable, made to its principal office, RWE shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of RWE, as applicable, relating to any matters contained in this Order; and

(B) Upon five days' notice to RWE, as applicable, and without restraint or interference from RWE, to interview officers or employees of RWE, who may have counsel present, regarding such matters.

X

It is Further Ordered That, RWE shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in any respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation, dissolution or sale of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

XI

It is Further Order That RWE shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as appendix I.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Alpha Acquisition Corp., a Delaware corporation, ("Alpha Acquisition"), RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie ("TWE–DEA"), a German corporation, RWE Aktiengesellschaft ("RWE") a German corporation (collectively the "Acquiring Parties"), Vista Chemical Company ("Vista"), a Delaware corporation, and the Federal Trade Commission (the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.* (collectively, "the Parties").

Whereas, Alpha Acquisition, a wholly-owned subsidiary of RWE–DEA, over 99 percent of whose voting securities are currently held by RWE, commenced a tender offer on December 18, 1990, for all of the issued and outstanding shares of Vista, with the intent of effecting a merger of Vista into Alpha Acquisition, pursuant to which Vista would become a subsidiary of RWE–DEA, all as contemplated by and provided for in that certain Agreement And Plan Of Merger entered into among Alpha Acquisition, RWE-DEA and Vista as of December 13, 1990; and

Whereas, the Commission is now investigating the transaction to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of section 2.34 of the Commission's Rules; and

Whereas, the Consent Order provides for the disposition by RWE and Vista of the RWE Patent Rights, the RWE Technology, the Vista Patent Rights, and the Vista Technology to a Licensee approved by the Commission and further provides for the formation of an Alumina Joint Venture with such Licensee and an arrangement to supply the Alumina Joint Venture with Joint Venture Alumina (such patent, technology and

contract rights collectively the "Subject Assets"); and

Whereas, RWE has submitted to the Commission an application for the approval of Discovery Aluminas, Inc., a Louisiana Corporation ("Discovery") pursuant to paragraphs II and IV of the Consent Order; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the viability and independence of the Subject Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), relief resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require effective relief and the Commission's right to seek to establish a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve an independent competitor pending the license of technology as required by the Consent Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, the Acquiring Parties' entering into this Agreement shall in no way be construed as an admission by them that the acquisition is illegal; and

Whereas, the Acquiring Parties understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, The Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the Acquiring Parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the Subject Assets have not been transferred to a License approved by the Commission, to seek the transfer of such assets as are held separate pursuant to this Agreement, as follows:

1. The Acquiring Parties agree to execute and be bound by the attached Consent Order.

2. In the event the Acquiring Parties or Vista fail to comply with the terms of this Agreement, the Parties agree that the Commission or the Attorney General may seek, in addition to any other remedies that may be available, any remedies, including civil penalties, that would be available pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, as if this Agreement were a final order of the Commission.

3. Upon the execution by the Parties of this Agreement, Vista will enter into the Alumina Joint Venture agreement, supply agreement and License Agreement annexed as exhibits to the Application of Discovery; and RWE will enter into the License Agreement and transfer agreement annexed as exhibits to the Application of Discovery. The Alumina Joint Venture agreement, supply agreement and License Agreements shall be consistent with, except for the duration of such agreements and the provisions requiring Commission prior approval (each of which shall be governed by this Agreement), by the provisions of paragraphs II and IV of the Agreement Containing Consent Order. Any material breach of the License Agreements, the Alumina Joint Venture agreement, or the supply agreement executed as part of the Alumina Joint Venture by RWE shall constitute a breach of this Agreement.

4. If within one hundred fifty (150) days of the date the Application of Discovery goes on the public record (i) Discovery becomes bankrupt or goes into receivership before the Application is approved by the Commission, (ii) the Alumina Joint Venture agreement, supply agreement and License Agreements annexed as exhibits to the Application of Discovery terminate for any reason, or (iii) the Commission rejects the Discovery application, the Acquiring Parties shall, as soon as practicable but in any event within thirty (30) days of the occurrence of either (i), (ii), or (iii) cause to be created a new corporation ("Newco") on the following terms and conditions:

a. Newco shall be incorporated under the laws of Delaware and shall have its principal place of business either in Texas or Louisiana. Newco's Certificate of Incorporation and By-Laws shall be substantially in the form of Exhibits A and B attached hereto.

b. The purposes of Newco shall be to purchase from Discovery its interest in the Subject Assets pursuant to the Transfer Agreement, to hold and exploit such interest and to maintain a competitive presence in the production and marketing of High Purity Alumina until such time as RWE has complied with paragraphs II and IV of the Agreement Containing Consent Order or a trustee has complied with paragraph VI of the Consent Order.

c. In connection with the formation of Newco, the Acquiring Parties shall purchase from Newco all its authorized common stock for $1.6 million pursuant to a subscription agreement substantially in the form of Exhibit C attached hereto.

d. The Board of Directors of Newco shall consist of at least three members, no more than one of which shall be an officer or director of, or otherwise affiliated with, the Acquiring Parties.

e. RWE shall cause Newco to employ or shall otherwise furnish to Newco suitable and sufficient personnel to carry out the purposes of Newco; such personnel shall have appropriate skills, experience and abilities to carry out the duties for which they have been employed.

5. The Acquiring Parties agree that, in the event Newco is created pursuant to paragraph 4, the Acquiring Parties shall hold all of Newco's assets and business operations separate and apart on the following terms and conditions:

a. The Newco assets and businesses shall be operated independently of the Acquiring Parties and independently of any other Parties owned in whole or in part by any of the Acquiring Parties, except to the extent that RWE must exercise discretion and control over any Newco assets to assure compliance with this Agreement or the Consent Order.

b. RWE shall not exercise direction or control over, or influence directly or indirectly, any of Newco's assets and businesses.

c. Except for the single RWE director, officer, employee, or agent serving on the "New Board" (as defined in subparagraph 5.h), RWE shall not permit any director, officer, employee, or agent of RWE to also be a director, officer or employee of Newco.

d. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, or by virtue of RWE's or Vista's participation in the Alumina Joint Venture pursuant to the Alumina Joint Venture agreement, defending investigations or litigation, obtaining legal advice, or acting to assure compliance with this Agreement or the Consent Order, RWE shall not receive or have access to, or the use of, any "material confidential information" relating to Newco's assets and businesses not in the public domain, except as such information would be available to the Acquiring Parties in the normal course of business as if RWE and Newco were separate and unrelated entities. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. "Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to the Acquiring Parties from sources other than Newco, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.

e. The Acquiring Parties shall not change the composition of the management of Newco except that the directors serving on the "New Board" (as defined in paragraph 5.h), excluding the director who is an officer, partner, employee or agent of RWE, shall have the power to remove employees for cause and fill any vacancies which may arise.

f. RWE shall do nothing to diminish the viability and marketability of Newco and shall not sell, transfer, encumber, or otherwise impair the marketability or viability of its assets (other than in the normal course of business or as provided herein).

g. All material transactions out of the ordinary course of business and not otherwise precluded shall be subject to a majority vote of the New Board (as defined in paragraph 5.h).

h. RWE may cause Newco to adopt new Articles of Incorporation and By-laws, provided that they are not inconsistent with other provisions of this Agreement, and may cause the election of a new board of directors of Newco ("New Board"). RWE may elect the directors to the New Board. Except as

permitted by this Agreement, the director of Newco who is also a partner, officer, employee or agent of RWE shall not receive in his capacity as director of Newco material confidential information relating to Newco's business in high-purity alumina, and shall not disclose any such information received under this Agreement to RWE or to any company owned in whole or in part by RWE. Nor shall such director use such information to obtain any advantage for RWE or for any company owned in whole or in part by RWE. Said director of Newco shall enter into a confidentiality agreement prohibiting disclosure of confidential information relating to Newco's business in high-purity alumina. Such director may participate in matters that come before the New Board that do not concern Newco's business in high-purity alumina. Such director may participate in matters that come before the New Board concerning carrying out RWE's and Vista's responsibility to complete the technology license, establish a joint venture and make a supply agreement. Except as permitted by this Agreement, such director shall not participate in, or attempt to influence the vote of any other director with respect to, any matters that would involve a conflict of interest if RWE and Newco were separate and independent entities. Meetings of the Board during the term of this Agreement shall be stenographically transcribed and the transcripts shall be retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of Newco shall be accounted for and retained separately in Newco.

j. Should the Commission seek in any proceeding to compel RWE to divest itself of the shares of stock or assets of Vista or Newco, or to compel RWE to divest any assets or businesses they may hold, or to seek any other injunctive or equitable relief, RWE shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Vista stock to be acquired. RWE also waives all rights to contest the validity of this Agreement.

k. Newco shall provide the Commission and RWE with quarterly financial statements in the same form and content as Newco would be required to file periodically with the Securities and Exchange Commission and the New York Stock Exchange if Newco were a publicly-held company whose stock were listed and traded on the New York Stock Exchange.

6. If the Commission disapproves the Consent Order after public comment, then within six (6) months of the closing date of the transfer of Discovery's interests in the Subject Assets to Newco (the "Closing Date"), RWE shall submit for Commission approval a plan to divest all the stock or assets of Newco. RWE shall have an absolute and unconditional obligation to divest all the stock or assets and assign all licensing and other agreements of Newco in accordance with such plan within six (6) months of approval of such plan by the Commission. If within eighteen (18) months of the Closing Date the Commission has not approved a plan submitted by RWE, RWE shall consent to the appointment by the Commission of a trustee who shall be authorized to sell and make assignments, consistent with the provisions of paragraph VI of the Consent Order, all the stock or assets of Newco. Provided, however, that the duration of each agreement shall be extended by the amount of time that Newco is owned by RWE, less the time between the submission of such plan to, and approval of such plan by, the Commission.

7. This Agreement, except paragraph 2, shall terminate if any of the following four events occurs:

a. The Commission approves the Application of Discovery;

b. If RWE has become obligated to create Newco pursuant to paragraph 4 above, on the date on which RWE has performed the acts set forth in paragraphs II and IV of the Agreement Containing Consent Order, whether or not the Consent Order has received final approval of the Commission;

c. If RWE has become obligated to create Newco pursuant to paragraph 4 above, on the date on which the trustee pursuant to paragraph VI of the Consent Order has satisfied paragraphs II and IV of the Consent Order;

d. In the event the Commission has not acted upon the Application of Discovery within one hundred fifty (150) days of the date the Application of Discovery goes on the public record, the Acquiring Parties may, at their option, terminate this Agreement by delivering written notice of termination to the Commission, which termination shall be effective no earlier than ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

Termination of this Agreement shall in no way operate to terminate the Agreement Containing Consent Order to Cease and Desist that the Acquiring Parties have entered into in this matter.

8. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to the Acquiring Parties made to their offices, RWE shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of RWE or Newco and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of RWE and Newco relating to compliance with this Agreement; and

b. Upon five (5) days notice to RWE or Newco, and without restraint or interference from them, to interview partners, officers, directors or employees of RWE or Newco, who may have counsel present, regarding any such matters.

9. This Agreement shall not be binding until approved by the Commission.

Certificate of Incorporation of (Newco)

Article First

The name of the corporation is (NEWCO) (the "Corporation").

Article Second

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

Article Third

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "GCL").

Article Fourth

The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of the par value of $.01 per share. All such shares shall be of one class and shall be designated "Common Stock".

Article Fifth

The name and mailing address of the sole incorporator is as follows:

Name	Address
(Name)	(Address)

Article Sixth

For the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders, it is further provided that:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors;

(2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation;

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide;

(4) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to section 174 of the GCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification;

(5) Any director or any officer elected or appointed by the stockholders or by the Board of Directors of the Corporation, or any committee thereof, may be removed at any time by a unanimous written consent of the stockholders of the Corporation or in such other manner as shall be provided in the By-Laws of the Corporation; and

(6) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the GCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided, however,* That no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

Article Seventh

The Corporation shall, to the full extent permitted by section 145 of the GCL as presently in effect or as it may hereafter be amended, indemnify all persons whom it may indemnify pursuant thereto and advance expenses of litigation to directors and officers when so requested.

Article Eighth

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the GCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

Article Ninth

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

In Witness Whereof, I (NAME), the sole incorporator of (NEWCO), have executed this Certificate of Incorporation on this ____ day of _____, 1991, and DO HEREBY CERTIFY under the penalties of perjury that the facts stated in this Certificate of Incorporation are true.

(Name) _____

Sole Incorporator

BY-LAWS OF NEWCO (a Delaware corporation)

Adopted _____, 1991

Article I

Offices

Section 1. Registered Office. The registered office of [NECO] (the "Corporation") in the State of Delaware shall be in the City of Wilmington, County of New Castle, and the registered agent in charge thereof shall be The Corporation Trust Company.

Section 2. Other Offices. The Corporation may have such other offices in such places, either within or without the State of Delaware, as the Board of Directors (the "Board" or the "Board of Directors") may from time to time determine or the business of the Corporation may require.

Article II

Meetings of Stockholders

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. The annual meetings of stockholders of the Corporation (the "Annual Meetings") shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the stockholders shall elect by a plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting. Written notice of the Annual Meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation, special meetings of stockholders of the Corporation ("Special Meetings") for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of a majority of the Board of Directors or at the request in writing of stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Written notice of a Special Meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of such meeting to each stockholder entitled to vote at such meeting.

Section 4. Quorum. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled to be voted at the meeting, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjournment meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, any question brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote at the meeting. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote at the meeting held by such stockholder. Such votes shall be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the office of the Corporation presiding at a meeting of stockholders, in his discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 6. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the certificate of Incorporation, any action required or permitted to be taken, by the laws of the State of Delaware, at any Annual or Special Meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 7. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

Section 8. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by section 7 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Article III

Board of Directors

Section 1. General Powers. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

Section 2. Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by the Board of Directors. Except as provided in Section 5 of this Article, directors shall be elected by a plurality of the votes cast at Annual Meetings, and each director so elected shall hold office until the next Annual Meeting and until his successor is duly elected and qualified, or until his earlier resignation or removal. Any director may resign at any time upon notice to the Corporation. Directors need not be stockholders of the Corporation.

Section 3. Organization and Order of Business. At each meeting of the Board, the President, if the President shall be a director, shall act as chairman of the meeting and preside thereat. In the case of the absence of the President, or if the President shall not be a director, any director chosen by a majority of the directors present at the meeting shall act as chairman of the meeting and preside at the meeting. The Secretary of the Corporation or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary shall be present at the meeting) whom the chairman shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

Section 4. Removal of Directors. Any director or the entire Board may be removed, with or without cause, at any time by the holders of a majority of the shares then entitled to vote at an election of directors.

Section 5. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 6. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 7. Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or any director. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight hours before the date of the meeting, by telephone or telegram on twenty-four hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 8. Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these By-Laws, at all meetings of the Board of Directors, one third of the total number of directors constituting the Board of Driectors shall constitute a quorum for the transaction of business, except that if one director constitutes the Board of Directors, then one director shall constitute a quorum, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Actions of Board by Written Consent. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 10. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by menas of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section 10 shall constitute presence in person at such meeting.

Section 11. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 12. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 13. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Article IV

Officers

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, may choose one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors and any Vice Chairman of the Board of

Directors (who must be directors). Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman or Vice Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at its first meeting held after each Annual Meeting shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. He shall be the Chief Executive Officer of the Corporation, and except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these By-Laws or by the Board of Directors.

Section 5. Vice Chairmen of the Board of Directors. Each Vice Chairman of the Board of Directors, if any, shall be a member thereof and shall perform such duties and have such powers as from time to time may be assigned by the Board of Directors.

Section 6. President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall have the power alone or with any other authorized officer to execute all bonds, mortgages, contracts and any other instruments of the Corporation, under the seal of the Corporation or otherwise (as shall the other officers of the Corporation when so authorized by these By-Laws, the Board of Directors or the President). In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and the Board of Directors. If there be no Chairman of the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these By-Laws or by the Board of Directors.

Section 7. Vice Presidents. At the request of the President or in his absence or in the event of his inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President or the Vice Presidents if there are more than one (in the order designated by the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall have the power alone or with any other authorized officer to execute all bonds, mortgages, contracts and any other instruments of the Corporation, under the seal of the Corporation or otherwise (as shall the other officers of the Corporation when so authorized by these By-Laws, the Board of Directors or the President). Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings at the meeting in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and Special Meetings, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 9. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall have the power alone or with any other authorized officer to execute all bonds, mortgages, contracts and any other instruments of these Corporation, under the seal of the Corporation or otherwise (as shall the other officers of the Corporation when so authorized by these By-Laws, the Board of Directors or the President). The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 10. Assistant Secretaries. Except as may be otherwise provided in these By-Laws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 11. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer,

and in the absence of the Treasurer or in the event of his disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 12. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Article V

Stock

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed, in the name of the Corporation (i) by the Chairman of the Board of Directors, the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

Section 2. Signatures. Where a certificate is countersigned by (i) a transfer agent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be cancelled before a new certificate shall be issued.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* That the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Article VI

Notices

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 2. Waviers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Article VII

General Provisions

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 5. Amendments. These By-Laws may be amended or repealed, or new By-Laws may be adopted, by the Board of Directors at any meeting thereof (or by action by written consent as provided under section 141(f) of the Delaware General Corporation Law); *provided* that By-Laws adopted by the Board may be amended or repealed by the stockholders.

Article VIII

Indemnification

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation. Subject to section 3 of this Article VIII, the Corporation shall indemnify any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and,

with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to section 3 of this Article VIII, the Corporation shall indemnify any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnifiction under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in section 1 of section 2 of this Article VIII, as the case may be. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner he reasonbly believed to be in or not opposed to the best interests of the Conporation, or with respect to any criminal ation or proceeding, to have had no reasonable cause to believe his conduct was unlawful, if his action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to him by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in sections 1 or 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under sections 1 and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in section 1 or 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under section 3 of this Article VIII not the absense of any determination thereunder shall be a defense to such application or create a presumption that the director, officer, employee or agent seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this section 5 shall be given to the Corporation promptly upon the filing or such application. If successful, in whole or in part, the director, officer, employee or agent seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses incurred by a director or officer in defending or investigating a threatened or pending action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action i ı his official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in section 1 and 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in section 1 or 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power or the obligation to indemnify him against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was a director of officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and benefici ıries of an

employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in Article VIII.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation of Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by section 5 hereof), the Corporation shall not be obligated to indemnify any director, officer, employee or agent in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors.

Section 12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

Exhibit C

RWE-DEA Aktiengesellschaft Für Mineraloel Und Chemie

_____, 1991

(NEWCO)
In care of The Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

Dear Sirs: The undersigned, RWE-DEA Aktiengesellschaft für Mineraloel und Chemie, hereby offers to subscribe and pay for 1,000 shares of Common Stock, par value $.01 per share, of [NEWCO], a Delaware corporation, at a price of $1,600 per share.

Very truly yours,

REW-DEA AKTIENGESELLSCHAFT FÜR MINERALOEL UND CHEMIE,

by_____
Name:
Title:

_____
Name:
Title:

Accepted:
(NEWCO)
by_____
Name:
Title:

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from RWE Aktiengesellschaft, RWE–DEA Aktiengesellschaft fur Mineraleol und Chemie, Alpha Acquisition Corporation (collectively "RWE") and Vista Chemical Company ("Vista") an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the proposed acquisition by RWE of all of the issued and outstanding common stock of Vista. RWE and Vista are producers of high-purity alumina, and both companies employ a similar production process that also obtains synthetic linear alcohols as a co-product. This production process is unique to RWE and Vista. The alumina that the companies produce is used in manufacturing diverse products such catalysts for petroleum refineries, chemical manufacturing, and automobile emissions control, abrasive grains, for industrial finishing applications, and anti-skid agents, for the paper industry.

RWE manufactures high purity alcohol process alumina for these applications at its plants in Germany, and exports it throughout the world. RWE has substantial sales of this alumina in the United States. Vista manufactures high purity alcohol process alumina at its plant in the United States, and also exports it throughout the world. Most of Vista's sales are in the United States.

The agreement containing consent order would, if issued by the Commission, settle the complaint that alleges an anticompetitive effect in the world market for high purity alcohol process alumina.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the world market for high purity alcohol process alumina and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The proposed order accepted for public comment contains provisions requiring the licensing of: (1) Certain RWE production technology for high-purity alcohol process alumina; (2) certain Vista production technology for high-purity alochol process alumina; and (3) certain Vista processing technology for high-purity alcohol process alumina. The licensed technology includes both patent rights, trade secrets, and other company know-how. The processing technology excludes processing technology relating to aluminas used for thickeners and most ceramics applications.

The purpose of these provisions is to provide a new company with the technology required to build a plant and establish itself as a producer of high-purity alcohol process alumina comparable to either Vista or RWE.

In addition, the proposed order contains provisions by which RWE would participate in an alumina joint venture with the technology licensee, and would supply the joint venture with alumina. The volume of alumina that RWE would be obligated to supply has been made a part of the proposed order, but because of the sensitive nature of this information, has not been included in the publicly available order.

The licensee would operate the joint venture; RWE would have a minority ownership share that would decline to the extent of disproportionate capital investments by the licensee. RWE would have a limited role in the management of the venture, and would have access only to limited information. The joint venture would have an initial term of four years that could be extended for another two years if the licensee has commenced construction of facilities necessary to produce high-purity alumina, and would terminate within sixty days of the date that the plant begins commercial production.

RWE would provide specified types and volumes of alumina to the joint venture. In particular, the joint venture could specify that RWE supply, from the Vista Lake Charles alumina plant, any grades and types of Vista's Catapal® B and Catapal® CF, or any other grades of Vista alumina that are used in chemical catalysts or automotive emissions control catalysts, which it would be free to market to any application. The joint venture could also specify that RWE supply alumina slurry of a quality that is suitable for use in sol gel abrasives, for marketing to that application.

The price of alumina to the joint venture has been made a part of the proposed order, but because of the sensitive nature of this information, has not been included in the publicly available order. The purpose of including in the proposed order an explicit price term is to provide that the alumina joint venture obtains a price that will enable it to compete effectively in marketing alumina.

The proposed order further provides that RWE should provide the licensee with specific customer information relating to certain applications for high-

purity alumina; Chemical catalysts; automotive emissions control catalysts; and abrasives. In addition, the proposed order provides that RWE assign to the joint venture any current Vista contracts relating to these applications.

The purpose of the joint venture is to provide the licensee with marketing experience, so as to facilitate this successful utilization of the technology licenses ultimately to construct new facilities (or modify existing facilities) to produce high-purity alumina.

If the licensee does not commence construction of the necessary facilities within four years of the execution of the licensing agreement, does not complete construction within six years, or if the original license terminates due to termination of the joint venture by reason of financial failure or material breach of the joint venture agreement by the licensee, the proposed order further provides that RWE license the technology to some other person. The purpose of this provision is provide an additional opportunity for use of the license to bring onstream new production of the relevant product.

Under the terms of the proposed order, RWE must complete the required technology license and establish the other necessary agreements within six months of the date the proposed order becomes final. If RWE fails to complete the required licensing within the six-month period, RWE shall consent to the appointment of a trustee, who would have twelve additional months to license the technology, establish the joint venture, and make the necessary supply agreement. In either case, the proposed licensing agreement must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

For a period of ten years from its effective date, the proposed order would also prohibit RWE from acquiring, without prior Commission approval, assets or any interest in any company throughout the world that is engaged in the manufacture, distribution or sale of high-purity alumina, and that has had, during the last three years, sales of at least 125,000 pounds of high-purity alumina in the United States in any six-month period.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 91-15068 Filed 6-24-91; 8:45]

BILLING CODE 6750-01-M

[File No. 891 0025]

Medical Staff of Broward General Medical Center; and Medical Staff of Holy Cross Hospital; Proposed Consent Agreements With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would prohibit, among other things, the two medical staffs from entering, or attempting to enter, into any agreement which would prevent or restrict the offering or delivery of health care services by Holy Cross Hospital, Broward General Hospital, Cleveland Clinic Florida (CFF), and CFF physician, or any other provider of health care services.

DATES: Comments must be received on or before August 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S-3115, Washington, DC 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Medical Staff of Broward General Medical Center and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby Agreed by and between the proposed respondent and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Medical Staff of Broward General Medical Center is an unincorporated association, organized and existing under the laws of the State of Florida, with its mailing address at 1600 South Andrews Avenue, Fort Lauderdale, FL 33316.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint here attached.

3. The proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the attached complaint, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of §2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information

public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The representatives and counsel of proposed respondent Broward General Medical Staff have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, the Broward General Medical Staff will be required to file compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is Ordered that for purposes of this order, the following definitions shall apply:

A. *Medical Staff* means the Medical Staff of Broward General Medical Center, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

B. *NBHD* means the North Broward Hospital District, a tax supported entity with its principal offices located at 1625 Southeast Third Avenue, Fort Lauderdale, FL 33316, the hospitals that are owned by the North Broward Hospital District, and its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

C. *Broward General* means the Broward General Medical Center, one of the hospitals of the North Broward Hospital District, located at 1600 South Andrews Avenue, Fort Lauderdale, FL 33316, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

D. *CCF* means Cleveland Clinic Florida, a nonprofit corporation organized under Florida law, located at 3000 West Cypress Creek Road, Ft. Lauderdale, FL 33309, its parent foundation (Cleveland Clinic Foundation, which is located at 9500 Euclid Avenue, Cleveland, OH 44195), any entity located in Florida that is owned, controlled or under the management of Cleveland Clinic Florida or Cleveland Clinic Foundation, and the officers, directors, committees, agents, employees, and representatives of Cleveland Clinic Florida or Cleveland Clinic Foundation.

E. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with hospital privileges at Broward General whose activities or professional conduct is reasonably believed to be detrimental to patient safety or the delivery of quality patient care.

II.

It Is Further Ordered that the Medical Staff directly or indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services, including any agreement to:

A. Refuse to deal or threaten to refuse to deal with the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services, including, but not limited to, any agreement or combination to refuse or threaten to refuse to:

1. Participate in any Medical Staff or NBHD committee, admit any patient to any NBHD hospital, fulfill any Medical Staff obligation imposed or recognized under any provisions of the Florida statutes, the Code of the NBHD, the By-Laws or Rules and Regulations of the Medical Staff, or fulfill any other function customarily performed by the Medical Staff;

2. Refer patients to, accept patient referrals from, provide back-up for, or consult in the treatment of any patient with, any CCF physician; or

3. Associate with NBHD or CCF as an employee or independent contractor or otherwise deal with NBHD, CCF or any CCF physician.

B. Deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF.

C. Deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician without a reasonable basis for concluding that the denial, limitation, or restriction serves the interests of the hospital in providing for the efficient and competent delivery of health care services.

D. Discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Broward General with respect to the rights accorded to a member of the Medical Staff.

E. Encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by this order.

III.

A. It Is Further Ordered that this order shall not be construed to prohibit the respondent Medical Staff or its members from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Broward General, where such conduct neither constitutes nor is part of any agreement, combination or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

B. It Is Further Ordered that this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person.

IV.

It Is Further Ordered that the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final:

1. Mail a copy of this order, the accompanying complaint, and the attached Announcement to: (a) Each Commissioner on the NBHD Board of Commissioners; (b) the Chief Executive Officers of Cleveland Clinic Florida and Cleveland Clinic Foundation; and (c) each member of the Medical Staff as of the date this order becomes final; and

2. Retract in writing the Medical Staff's September 20, 1985, resolution opposing any affiliation between CCF and the NBHD.

B. For a period of three (3) years after the date this order becomes final:

1. Report to the Federal Trade Commission any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or changes in existing hospital privileges, of any CCF physician or other CCF health care practitioner, within thirty (30) days after final action upon the Medical Staff's recommendation;

2. Distribute to each new member of the Medical Staff a copy of this order, the accompanying complaint, and the attached Announcement within 30 days after he or she is officially admitted to the Medical Staff; and

3. Maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary date of the initial report, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied with and intends to continue complying with this order.

D. Notify the Federal Trade Commission of any proposed change in its organization that may affect compliance obligations arising out of this order at least thirty (30) days prior to the effective date of any such proposed change.

Appendix A—Announcement

As you may be aware, on [date] the Federal Trade Commission issued a complaint and a final consent order against the Broward General Medical Staff.

The order generally prohibits the Medical Staff from collectively refusing to deal with the North Broward Hospital District, Broward General ("Broward General"), Cleveland Clinic Florida ("CCF"), or CCF physicians. The order also prohibits the Medical Staff from refusing to evaluate applications for hospital privileges of any person because of his or her affiliation with CCF, or recommending the denial of hospital privileges for any CCF physician without a reasonable basis for concluding that the denial is reasonably related to the efficient operation and competent delivery of health care services at Broward General.

In addition, the order prohibits the Medical Staff from discriminating or threatening to discriminate against any CCF physician with privileges at Broward General, regarding the rights accorded to a member of the Medical Staff. Finally, the Medical Staff is also prohibited from encouraging any person or organization to take actions that the order prohibits the Medical Staff from taking.

Under the order, the Medical Staff retracted its September 20, 1985, resolution, which the complaint alleges was a threat to boycott Broward General to discourage the Hospital from affiliating with CCF.

The agreement between the Federal Trade Commission and the Broward General Medical Staff is for settlement purposes only and does not constitute an admission by the Medical Staff that the law has been violated as alleged in the complaint. The order does not prohibit the members of the Medical Staff from lawfully carrying on their medical practices and from providing patient care at Broward General and does not otherwise prohibit the Medical Staff, its officers and committees from engaging in lawful peer review and quality assurance at Broward General.

For more specific information, you should refer to the FTC complaint and order. The civil penalty for violation of the order is $10,000 per day for each order violation. A copy of the order is enclosed.

(Vice Chief of Staff)
Broward General Medical Staff.

Medical Staff of Broward General Medical Center Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement of the Medical Staff of Broward General Medical Center ("respondent Medical Staff"), Fort Lauderdale, Florida, to a proposed consent order. The agreement would settle charges by the Federal Trade Commission that the respondent Medical Staff violated section 5 of the Federal Trade Commission Act by conspiring to prevent, delay and limit competition from the Cleveland Clinic Foundation ("Cleveland Clinic" or "the Clinic"), through the use of boycott threats and other anticompetitive practices.

The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint, prepared for issuance by the Commission with the proposed order, alleges that the Cleveland Clinic, located in Cleveland, Ohio, is a provider of health care services to patients requiring complex medical care. According to the complaint, the Clinic is organized and operated as a multispecialty group medical practice and, as such, provides consumers an alternative to traditional individual and single specialty group forms of practice. Under the Clinic's multispecialty group practice format, patients often can obtain all necessary specialized medical care and ancillary services from employees of the Clinic, including salaried physicians.

The complaint alleges that the Cleveland Clinic sought to establish a regional branch in Northern Broward County, Florida. According to the complaint, in 1985 the North Broward Hospital District ("NBHD"), which owns and operates Broward General Medical Center ("the Hospital"), and the Cleveland Clinic sought to negotiate an affiliation pursuant to which the Hospital's facilities would be utilized in the development of the Clinic's Northern Broward County branch, known as Cleveland Clinic Florida ("CCF"). NBHD officials proposed developing an affiliation at Broward General under which physicians on the Hospital's Medical Staff would be invited to participate in a joint venture with NBHD and CCF.

The complaint further alleges that respondent Medical Staff considered the proposed affiliation to be a competitive threat to the individual and small group fee-for-service form of medical practice existing in Northern Broward County. Respondent Medical Staff was concerned that consumers would find CCF's alternative form of practice sufficiently attractive to disrupt existing patterns of patient referrals among individual physicians and small single specialty groups, thereby reducing revenues of existing physicians and physician groups.

The complaint alleges that in an effort to eliminate the competitive threat from CCF, respondent Medical Staff conspired with at least some of its members and others, to prevent, delay and limit competition from CCF through the use of boycott threats directed at Broward General, as well as other anticompetitive practices. The complaint alleges that at various times during and in furtherance of the combination and conspiracy, respondent Medical Staff and others have:

A. Agreed to boycott and threatened to boycott Broward General in order to coerce NBHD and Broward General:

(i) To refuse to affiliate with the Clinic, and

(ii) To prevent CCF physicians from becoming members of the respondent Medical Staff;

B. Refused to deal with Cleveland Clinic except on collectively determined terms;

C. Induced NBHD, through pretextual justifications, to deny hospital privileges to CCF physicians; and

D. Refused to process applications for privileges by CCF physicians.

The complaint further alleges that respondent Medical Staff's actions have injured consumers in the Nothern Broward County, by, among other things, depriving consumers of the price and quality benefits of competition between CCF's integrated multispecialty group practice and independent fee-for-service practitioners, and hindering CCF's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing CCF from offering specialty and subspecialty services.

The Proposed Consent Order

The proposed consent order would prohibit respondent Medical Staff from entering or attempting to enter into any agreement or combination to refuse to deal or threaten to refuse to deal with Broward General, CCF, any CCF physician, or any other provider of health care services, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services.

The consent order specifically would prohibit any agreement or combination for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services including any agreement to: (1) Refuse or threaten to refuse to provide, or delay unreasonably in providing, an application for medical staff privileges to any CCF physician who submits a written request for the same; (2) deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF; (3) deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician without a reasonable basis for concluding that the denial, limitation, or restriction serves the interests of the hospital in providing for the efficient and competent delivery of health care services; (4) discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Broward General with respect to the rights accorded to a member of the Medical Staff; and (5) encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by the order.

The proposed order would not prohibit the respondent Medical Staff from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at the Hospital, where such conduct is not part of any agreement to impede competition unreasonably. This provision makes clear that respondent Medical Staff can engage in its customary activities so long as they are not aimed at impeding competition. The proposed order further would not prohibit respondent Medical Staff's members from entering into agreements with physicians with whom they may practice as partners, in professional corporations, or as employees of the same person.

The order also would require respondent Medical Staff to mail copies to the complaint and order to NBHD and CCF officials. Further, the order would require respondent Medical Staff to retract in writing the Medical Staff's September 20, 1985, resolution opposing any affiliation between CCF and the NBHD.

Finally the order requires that the respondent Medical Staff: (1) File compliance reports with the Commission; (2) report any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or change in existing hospital privileges, or any CCF physician; (3) distribute to each new member of the Medical Staff a copy of the order, the accompanying complaint, and the attached Announcement; and (4) notify the Federal Trade Commission of any proposed change in its organization that may effect compliance obligations arising out of this order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order to modify its terms in any way.

The proposed order was entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Medical Staff of Holy Cross Hospital, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated,

It Is Hereby Agreed by and between the proposed respondent and its counsel, and counsel for the Federal Trade Commission that:

1. Proposed respondent Medical Staff of Holy Cross Hospital is an unincorporated association, organized and existing under the laws of the State of Florida, with its mailing address at 4725 N. Federal Highway, Ft. Lauderdale, FL 33308.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint here attached.

3. The proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the attached complaint, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreeent is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the

complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent's representatives and its counsel have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, the Medical Staff of Holy Cross Hospital will be required to file compliance reports showing that the Medical Staff of Holy Cross Hospital has complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It Is Ordered that for purposes of this order, the following definitions shall apply:

1. *Medical Staff* means the Medical Staff of Holy Cross Hospital, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

2. *Holy Cross Hospital* means Holy Cross Hospital, Inc., a not-for-profit corporation with its principal officers located at 4725 N. Federal Highway, Ft. Lauderdale, FL 33308, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

3. *CCF* means Cleveland Clinic Florida, a nonprofit corporation organized under Florida law, located at 3000 West Cypress Creek Road, Ft. Lauderdale, FL 33309, its parent foundation (Cleveland Clinic Foundation, which is located at 9500 Euclid Avenue, Cleveland, OH 44195), any entity located in Florida that its owned, controlled, or under the management of Cleveland Clinic Florida or Cleveland Clinic Foundation, and the officers, directors, committees, agents, employees, and representatives of Cleveland Clinic Florida or Cleveland Clinic Foundation.

4. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with hospital privileges at Holy Cross Hospital whose activities or professional conduct is reasonably believed to be determental to patient safety or the delivery of quality patient care.

II.

It Is Ordered that the Medical Staff, directly or indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commisssion Act, shall forthwith cease and desist from entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Holy Cross Hospital, CCF, and CCF physician, or any other provider of health services, including any agreement to:

A. Refuse to deal or threaten to refuse to deal with Holy Cross Hospital, CCF, and CCF physician, or any other provider of health care services, including, but not limited to, any agreement or combination to refuse or threaten to refuse to:

1. Admit any patient to Holy Cross Hospital, fulfill any Medical Staff obligation imposed or recognized under any provision of the Florida statutes, the By-laws or Rules and Regulations of the Medical Staff, or fulfill any other function customarily performed by the Medical Staff;

2. Refer patients to, accept patient referrals from, provide back-up for, or consult in the treatment of any patient with, any CCF physician; or

3. Associate with Holy Cross Hospital or CCF as an employee or independent contractor, or otherwise deal with Holy Cross Hospital, CCF or any CCF physician.

B. Refuse or threaten to refuse to provide, or delay unreasonably in providing, an application for medical staff privileges to any CCF physician who submits a written request for the same.

C. Deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF.

D. (i) Deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician, or (ii) close or recommend to close any portion of the Medical Staff without a reasonable basis for concluding that such action or recommendation serves the interests of the hospital in providing for the efficient and competent delivery of health care services.

E. Discriminate, or threaten to discriminate, against any CCF physician with hospital privileges to Holy Cross Hospital with respect to the rights accorded to a member of the Medical Staff.

F. Encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by this order.

III.

A. *It Is Further Ordered* that this order shall not be construed to prohibit the respondent Medical Staff or its members from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Holy Cross Hospital, where such conduct neither constitutes nor is part of any agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

B. *It Is Further Ordered* that this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person as said Medical Staff member.

IV.

It Is Further Ordered that the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final:

1. Mail a copy of this order, the accompanying complaint, and the attached Announcement to: (a) Each member of the Board of Trustees of the Holy Cross Hospital; (b) the Chief Executive Officer of Holy Cross Hospital; (c) the Administrator of Holy Cross Hospital; (d) the Chief Executive Officers of Cleveland Clinic Florida and Cleveland Clinic Foundation; and (e) each memer of the Medical Staff; and

2. Revise the Medical Staff privilege application form by deleting any

question relating to whether an applicant is an employee of a corporation and any request for a copy of any employment agreement between an applicant and any other person or corporation. A copy of such revised application form shall be provided to the Federal Trade Commission within thrity (30) days after being adopted by vote of the Medical Staff as provided in the Medical Staff bylaws.

B. For a period of three (3) years after the date this order becomes final:

1. Report to the Federal Trade Commission any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or change in existing hospital privileges, of any CCF physician or other CCF health care practitioner, within thirty (30) days after final action upon the Medical Staff's recommendation;

2. Distribute to each new member of the Medical Staff a copy of this order, the accompanying complaint, and the attached Announcement within 30 days after he or she is officially admitted to the Medical Staff; and

3. Maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary date of the initial report, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied with and intends to continue complying with this order.

D. Notify the Federal Trade Commission of any proposed change in its organization that may affect compliance obligations arising out of this order at least thirty (30) days prior to the effective date of any such proposed change.

Appendix A—Announcement

As you may be aware, on (date) the Federal Trade Commission issued a complaint and a final consent order against the Holy Cross Hospital Medical Staff.

The order generally prohibits the Medical Staff from collectively refusing to deal with Holy Cross Hospital, Cleveland Clinic Florida ("CCF") or CCF physicians. The order also prohibits the Medical Staff from refusing to evaluate applications for hospital privileges of any person because of his or her affiliation with CCF, or recommending the denial of hospital privileges for any CCF physician without a reasonable basis for concluding that the denial is reasonably related to the efficient operation of and competent delivery of health services at Holy Cross Hospital.

In addition, the order prohibits the Medical Staff from discrimination or threatening to discriminate against any CCF physician with privileges of Holy Cross Hospital, regarding the rights accorded to a member of the Medical Staff. Finally, the Medical Staff is also prohibited from encouraging any person or organization to take actions that the order prohibits the Medical Staff from taking.

Under the order, the Medical Staff removed from the hospital privilege application form the inquiry whether an applicant is an employee of a corporation, which the complaint alleges was added to the application form as a means of discriminating against applications filed by physician employees of CCF.

For more specific information, you should refer to the FTC complaint and order. The civil penalty for violation of the order is $10,000 per day for each order violation. A copy of the order is enclosed.

(President),
Holy Cross Hospital Medical Staff.

Medical Staff of Holy Cross Hospital Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement of the Medical Staff of Holy Cross Hospital ("respondent Medical Staff"), Fort Lauderdale, Florida, to a proposed consent order. The agreement would settle charges by the Federal Trade Commission that the respondent Medical Staff violated section 5 of the Federal Trade Commission Act by conspiring to prevent, delay and limit competition from the Cleveland Clinic Foundation ("Cleveland Clinic" or "the Clinic"), through the use of boycott threats and other anticompetitive practices.

The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint, prepared for issuance by the Commission with the proposed order, alleges that the Cleveland Clinic, located in Cleveland, Ohio, is a provider of health care services to patients requiring complex medical care. According to the complaint, the Clinic is organized and operated as a multispecialty group medical practice, and, as such, provides consumers an alternative to traditional individual and single specialty group forms of practice. Under the Clinic's multispecialty group format, patients often can obtain all necessary specialized medical care and ancillary services from employees of the Clinic, including salaried physicians.

The complaint alleges that the Cleveland Clinic sought to establish a regional branch in Northern Broward County, Florida. According to the complaint, Holy Cross Hospital ("the Hospital") and the Cleveland Clinic sought in 1986 to negotiate an affiliation pursuant to which the Hospital's facilities would be utilized in the development of the clinic's Northern Broward County branch, known as Cleveland Clinic Florida ("CCF"). The proposed affiliation provided that CCF would lease unused hospital beds and purchase ancillary hospital-based services from Holy Cross Hospital.

The complaint further alleges that respondent Medical Staff considered the proposed affiliation to be a competitive threat to the individual and small group fee-for-service form of medical practice existing in Northern Broward County. Respondent Medical Staff was concerned that consumers would find CCF's alternative form of practice sufficiently attractive to disrupt existing patterns of patient referrals among individual physicians and small single specialty groups, thereby reducing revenues of existing physicians and physician groups.

The complaint alleges that in an effort to eliminate the competitive threat from CCF, respondent Medical Staff conspired with at least some of its members and others, to prevent, delay and limit competition from CCF through the use of boycott threats directed at Holy Cross Hospital, as well as other anticompetitive practices. The complaint alleges that at various times during and in furtherance of the combination and conspiracy, respondent Medical Staff and others have:

A. Agreed to boycott and threatened to boycott Holy Cross Hospital in order to coerce the Hospital:

(i) To refuse to affiliate with the Clinic, and

(ii) To prevent CCF physicians from becoming members of the Medical Staff;

B. Refused to deal with Cleveland Clinic except on collectively determined terms;

C. Induced Holy Cross Hospital, through pretextual justifications, to deny hospital privileges to CCF physicians; and

D. Refused to process applications for privileges by CCF physicians.

The complaint further alleges that respondent Medical Staff's actions have injured consumers in Northern Broward County, by, among other things, depriving consumers of the price and quality benefits of competition between CCF's integrated multispecialty group practice and independent fee-for-service practitioners, and hindering CCF's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing CCF from offering specialty and subspecialty services.

The Proposed Consent Order

The proposed consent order would prohibit respondent Medical Staff from entering or attempting to enter into any agreement or combination to refuse to deal or threaten to refuse to deal with Holy Cross Hospital, CCF, any CCF physician, or any other provider of health care services for the purpose or with the effect of preventing or restricting the offering or delivery of health care services.

The consent order specifically would prohibit any agreement or combination for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Holy Cross Hospital, CCF, any CCF physician, or any other provider of health services, including any agreement to: (1) Refuse or threaten to refuse to provide, or delay unreasonably in providing, an application for medical staff privileges to any CCF physician who submits a written request for the same; (2) deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF; (3) deny or recommend to (i) deny, limit, or otherwise restrict hospital privileges for any CCF physician, or (ii) close any portion of the Medical Staff without a reasonable basis for concluding that such decision or recommendation serves the interests of the hospital in providing for the efficient and competent delivery of health care services; (4) discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Holy Cross Hospital with respect to the rights accorded to a member of the Medical Staff; and (5) encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by the order.

The proposed order would not prohibit the respondent Medical Staff from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Holy Cross Hospital, where such conduct is not part of any agreement to impede competition unreasonably. This provision makes clear that respondent Medical Staff can engage in its customary activities so long as they are not aimed at impeding competition. The proposed order further would not prohibit respondent Medical Staff's members from entering into agreements with physicians with whom they may practice as partners, in professional corporations, or as employees of the same person.

The order also would require respondent Medical Staff to mail copies of the complaint and order to Holy Cross Hospital and CCF officials. Further, the order would require respondent Medical Staff to revise its Medical Staff privilege application form by deleting the question whether an applicant is an employee of a corporation, and the associated request for a copy of any employment agreement between an applicant and any other person or corporation.

Finally the order requires that the respondent Medical Staff: (1) File compliance reports with the Commission; (2) report any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or change in existing hospital privileges, of any CCF physician; (3) distribute to each new member of the Medical Staff a copy of the order, the accompanying complaint, and the attached Announcement; and (4) notify the Federal Trade Commission of any proposed change in its organization that may affect compliance obligations arising out of this order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed order was entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 91-15067 Filed 6-24-91; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Report to Congress on the Costs of Operating Privately Owned Vehicles

The law (5 U.S.C. 5707(b)) requires the Administrator of General Services to periodically investigate the cost to Government employees of operating privately owned vehicles (automobiles, motorcycles, and airplanes) while on official business, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report is being published to comply with the requirements of the law.

Dated: June 12, 1991.

Richard G. Austin,

Administrator of General Services.

Report to Congress

The Travel Expense Amendments Act of 1975 (5 U.S.C. 5707(b)(1)) requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of operating privately owned vehicles (automobiles, motorcycles, and airplanes) to Government employees while on official business and report the results to the Congress at least once a year. The law further requires that a determination of the average, actual cost per mile be made based on the results of the investigation. Such figures must be reported to the Congress within 5 working days after the determinations have been made.

Pursuant to the requirements of 5 U.S.C. 5707(b)(1), the General Services Administration (GSA) conducted an investigation of the 1989 costs of operating privately owned motorcycles, automobiles, and airplanes and consulted with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation on the results. As required, GSA is reporting the results of the investigation and the cost per mile determinations. GSA's cost studies show per-mile operating costs of 21.0 cents for motorcycles, 25.5 cents for automobiles, and 72.0 cents for airplanes.

I will issue a regulation to increase the current 24-cent for automobiles to 25 cents per mile, the maximum reimbursement allowance under existing law (5 U.S.C. 5704). The law also provides reimbursement ceilings of 20 and 45 cents per mile for motorcycles

and airplanes, respectively. GSA is considering alternative approaches to establishing reimbursement allowances for Federal employee use of privately owned vehicles while on official Government business.

This report on the cost of operating privately owned vehicles will be published in the **Federal Register**.

[FR Doc. 91-14991 Filed 6-24-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 FR 35247, dated September 6, 1984) is amended to include the Secretary's delegation to the Administrator, HCFA, of the authority to conduct various demonstration projects under the provisions of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, and the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203.

The specific changes to part F. are described below:

Section F.30., Delegations of Authority, is amended by adding paragraphs GG. through OO. The new delegations of authority read as follows:

GG. The authority under section 9305(k) of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, and as may hereafter be amended, to conduct at least four projects on prior and concurrent authorization for post-hospital extended care and home health services furnished under part A or part B of title XVIII of the Social Security Act. The demonstration projects authorized under section 9305(k) of Public Law 99-509 must be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, physicians, skilled nursing facilities, home health agencies, long-term care providers, fiscal intermediaries, and Medicare beneficiaries.

HH. The authority under section 9342 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, as amended by section 4164(a)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, and as may hereafter be amended, to conduct at least 5 but not more than 10, 4-year demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act, who are victims of Alzheimer's disease or related disorders.

II. The authority under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and section 4744(a) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, and as may hereafter be amended, to conduct a frail elderly demonstration which includes the authority to grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 15 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization. In order to receive a waiver under section 9412(b) of Public Law 99-509, an organization must be awarded a grant from the Robert Wood Johnson Foundation.

JJ. The authority under section 9414 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, as amended by section 4118(o) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and as may hereafter be amended, to enter into an agreement with the State of New Jersey for the purpose of conducting a pilot project under title XIX of the Social Security Act for providing respite care services for elderly and disabled individuals in order to determine the extent to which (1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and (2) respite care services enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization.

KK. The authority under section 4007(c) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, as amended by section 411(b)(6)(C) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360, and as may hereafter be amended, to conduct a demonstration project to develop and determine the costs and benefits of establishing a uniform system for the reporting by Medicare participating hospitals of balance sheet and information described in section 4007(c)(2) of Public Law 100-203. The demonstration must be conducted with hospitals in at least two States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

LL. The authority under section 4015(a) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and as may hereafter be amended, to conduct no more than three capitation demonstration projects with an entity which is either an eligible organization with a contract under section 1876 of the Social Security Act or which meets the restrictions and requirements of section 4015(a) of Public Law 100-203. No project may be authorized under section 4015(a) of Public Law 100-203 unless the entity offering the project has the necessary financial reserves to pay for any liability for benefits under the project including those liabilities for health benefits under Medicare and any supplemental benefits.

MM. The authority under section 4015(b) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, to conduct demonstration projects for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act (the Act) including: (1) Computing adjustments to the average per capita cost under section 1876 of the Act on the basis of health status or prior utilization of services, and (2) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under section 1876 of the Act which differs from payments currently provided on a county-by-county basis. No project may be authorized under section 4015(b) of Public Law 100-203 unless an entity is an eligible organization as defined in section 1876(b) of the Act and all the requirements of subsections (c) and (i)(3) of section 1876 of the Act are met.

NN. The authority under section 4027 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, as amended by section 411(d) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360, and as may hereafter be amended, to conduct a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the Medicare and Medicaid programs.

OO. The authority under section 4079 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, and as may hereafter be amended, to enter into an agreement with not fewer than four eligible organizations submitting applications under section 4079 of Public Law 100–203 to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization in accordance with section 4079(c)(2) of Public Law 100–203. No agreements may be entered into with an eligible organization to conduct a demonstration project under section 4079 of Public Law 100–203 unless the organization meets the requirements of subsections (c) and (d) of section 4079 with respect to members enrolled with the organization.

Reservation of Authority

The authority to make reports to Congress has been reserved by the Secretary and is not included in the delegations described in paragraphs GG. through OO. above.

The authorities herein delegated may be further redelegated. The delegation of these authorities is effective immediately. In addition, I hereby affirm and ratify any actions taken by the Administrator or other Health Care Financing Administration officials which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: June 12, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 91–15028 Filed 6–24–91; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priority for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration (HRSA) announces the acceptance of applications for fiscal year (FY) 1992 for Grants for Area Health Education Centers Special Initiatives under the authority of section 781(a)(2) of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607. Comments are invited on the proposed funding priority. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 781(a)(2) authorizes Federal project assistance to medical and osteopathic schools which have previously received Federal financial assistance for an area health education centers (AHEC) program under either section 802 of Public law 94–484 in FY 1979 or under section 781(a)(1). In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project assistance on behalf of an area health education center that is no longer federally funded as part of that program.

Section 781(a)(2) applications will be for projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system; to encourage regionalization of educational responsibilities of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program (section 338–A of the PHS Act) to effectively provide health services in health professional shortage areas (section 332 of the PHS Act). Public Law 101–597, enacted November 16, 1990, changed the term 'Health Manpower Shortage Area' to read 'Health Professional Shortage Area.'

To receive support, programs must meet the requirements of regulations set forth in 42 CFR part 57, subpart MM. The period for Federal support shall not exceed two years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Area Health Education Centers Special Initiatives Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported eduction and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The relative merit of the proposed project; and
2. The relative cost-efficiency of the proposed project.

In addition, the following mechanisms will be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

The following funding preference was established in FY 1988 after public comment and the Administration is extending this preference in FY 1992.

Funding Preference

In making awards under section 781 for FY 1992, a funding preference will be given to approved competing continuation applications as authorized by section 781(a)(1).

The following funding priorities were established in FY 1991 after public comment and the Administration is extending these priorities in FY 1992.

Funding Priorities

In determining the order of funding of approved applications the following priorities will be given to:

1. Applications which demonstrate substantial clinical training in one or more PHS Act section 332 Health Professional Shortage Area(s) and/or a

PHS Act section 329 Migrant Health Center, PHS Act section 330 Community Health Center, or State-designated clinic/center serving an underserved population. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

2. Applications proposing centers (projects) that will serve Health Professional Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

Proposed Funding Priority for Fiscal Year 1992

Additionally, the following funding priority is proposed: Applications which are innovative in their health professions educational approaches to infant mortality prevention, HIV/AIDS, substance abuse or geriatrics. Innovation may be demonstrated by the concept/methodology to be used, by the establishment of a new educational relationship with a health care delivery system, by the population to be served within the center area, or by the subject or disease for the educational intervention, as opposed to the continuation of an existing effort.

These curricular areas are combined in a single funding priority to reduce the total number of funding priorities and to place an emphasis in all the program areas on innovation. Substance abuse was added because of its critical importance as a health care problem and the general perception that many health care providers do not effectively assist patients through prevention counseling, diagnosis or treatment.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the FY 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before July 25, 1991 will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Requests for application materials and questions regarding grants policy and business management aspects should be addressed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is August 5, 1991. Applications shall be considered as meeting the deadline if they are either: (1) *Received on* or before the deadline date, or (2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

If additional programmatic information is needed, please contact: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

This program is listed at 93.924 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 16, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–14999 Filed 6–24–91; 8:45 am]

BILLING CODE 4160–15–M

Centers for Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 55 FR 22101, May 31, 1990) is amended to reflect the following title changes: (1) Center for Chronic Disease Prevention and Health Promotion to National Center for Chronic Disease Prevention and Health Promotion, (2) Center for Environmental Health and Injury Control to National Center of Environmental Health and Injury Control, (3) Center for Infectious Diseases to National Center for Infectious Diseases, and (4) Center for Prevention Services to National Center for Prevention Services.

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete the title for the *Center for Chronic Disease Prevention and Health Promotion (HCL)* and substitute the following title: *National Center for Chronic Disease Prevention and Health Promotion (HCL).*

Delete the title for the Center *for Environmental Health and Injury Control (HCN)* and substitute the following title: *National Center for Environmental Health and Injury Control (HCN).*

Delete the title for the *Center for Infectious Diseases (HCR)* and substitute the following title: *National Center for Infectious Diseases (HCR).*

Delete the title for the *Center for Prevention Services* (HCM) and substitute the following title: *National Center for Prevention Services (HCM)*

Dated: June 12, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–15027 Filed 6–24–91; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Social Security Ruling SSR 91-4; Relationship—Validity of a Haitian Divorce—Estoppel—Texas

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91–4. This Ruling, which is based on an opinion of the Office of the General Counsel, concerns whether Texas would recognize the validity of a Haitian divorce and whether a claimant for widow's insurance benefits who was a party to such a divorce would be estopped from denying its validity.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

In accordance with 20 CFR 422.418, all references to individuals or specific businesses involved have been deleted from the Ruling so as not to disclose confidential information, unless this information is already a matter of public record.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: June 3, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 202(e)(1), 216(c), and 216(d)(2) of the Social Security Act (42 U.S.C. 402(e)(1), 416(c), and 416(d)(2)) Relationship—Validity of a Haitian Divorce—Estoppel—Texas

20 CFR 404.335, 404.336(a)(2), and 404.345

The claimant and the worker were married in Connecticut on April 30, 1972, and both parties were domiciled in Texas when the worker divorced the claimant in Haiti on December 29, 1976. The worker died in Texas in 1979. On March 12, 1987, the claimant applied for widow's insurance benefits on the deceased worker's earnings record. Because the claimant and the worker were domiciled in Texas rather than Haiti when the divorce decree was entered, a Texas court could refuse to recognize the Haitian divorce as valid. The evidence of record, however, showed that the claimant consented fully to the divorce, submitted freely to the jurisdiction of the Haitian court, was represented by counsel in the proceeding, and received property pursuant to a settlement agreement which was incorporated into the divorce decree. The evidence also showed that the claimant allowed the divorce to go unchallenged for more than 10 years and that she acted in full recognition of its validity by filing separate tax returns under her maiden name from 1976 through 1979 and by having her last name legally changed from her married name to her maiden name in 1977. Further, the evidence showed that, when the claimant changed her name, she specifically cited the Haitian divorce decree and its failure to restore her maiden name as a reason for making the change. *Held,* in view of the foregoing, the claimant was estopped from denying the validity of her divorce from the worker and, thus, was not entitled to widow's insurance benefits on his earnings record. Moreover, the claimant was not entitled to benefits as the worker's surviving divorced spouse because, under 42 U.S.C. 416(d)(1), she had not been married to him for at least 10 years.

A question has been raised regarding the validity of a Haitian divorce. Specifically at issue is whether Texas would recognize such a divorce and whether a claimant who was a party to the divorce would be estopped from denying its validity. In this particular case, the Social Security Administration (SSA) believes that whether or not a Texas court would recognize the Haitian divorce, the claimant would be estopped from challenging its validity.

The worker and the claimant were married on April 30, 1972, in Madison, Connecticut. The worker flew to Haiti on December 29, 1976, to obtain a divorce and remained there for several days. On December 23, 1976, before the divorce was granted, the claimant signed a notarized statement acknowledging the divorce, submitting herself to the jurisdiction of the Haitian court, and appointing an attorney to appear on her behalf. On that same date, the parties signed a property settlement agreement which was incorporated into the divorce decree. The divorce decree was rendered in Haiti on December 29, 1976, though both parties were residents of Texas. On July 11, 1977, the claimant was granted a court order changing her last name from her married name to her maiden name. She also filed separate tax returns under her maiden name from 1976 through 1979. The worker died in Texas in 1979. On March 12, 1987, the claimant applied for widow's insurance benefits on the worker's earnings record.

To be eligible to receive widow's insurance benefits, a claimant must meet the requirements set out in section 202(e)(1) of the Social Security Act (the Act). According to that section of the Act, "the widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual * * * shall be entitled to a widow's insurance benefit * * *." To be eligible as a widow as defined in section 216(c), a woman must be the surviving wife of the decedent. To be eligible as a surviving divorced wife under section 216(d)(2), a woman must have been married to the deceased worker for a period of 10 years immediately before the date the divorce became effective. Because the claimant and the worker were married in 1972 and divorced in 1976 in Haiti, the claimant would not qualify for benefits as a surviving divorced wife if this Haitian divorce were recognized as valid, since the duration of the marriage did not meet the 10-year requirement. If the divorce were not recognized, the claimant would be deemed to have been married to the worker until the time of his death and would therefore be eligible to receive benefits as a widow unless she is estopped from denying the validity of her divorce. The determination of whether the claimant would be entitled

to survivor benefits thus depends initially upon the law in Texas as it pertains both to the recognition of foreign divorce decrees and to the applicability of estoppel.

Article 4, section 1 of the United States Constitution, the "full faith and credit" clause, requires each State of the union to enforce the acts, records, or judicial proceedings "of every other state." This clause does not, however, require States to enforce decrees of foreign countries. *Schacht* v. *Schacht,* 435 S.W. 2d 197 (Tex. Civ. app.—Dallas 1968). Should a State decide to enforce such a decree, the decision would be based on the doctrine of comity. This doctine allows a State court to give full effect to a decision of another jurisdiction based on the mutual interests of respect and justice. Therefore, while a Texas court could give effect to a Haitian divorce decree, it is not bound to do so.

A key factor which a Texas court would consider in determining whether to give full faith and credit to a foreign divorce is whether the parties to the divorce were domiciled in the foreign country when the decree was entered. *Schacht, supra.* According to the U.S. Supreme Court, "(u)nder our system of law, judicial power to grant a divorce—jurisdiction strictly speaking—is founded on domicile * * *. Domicile implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance." *Williams* v. *North Carolina,* 325 U.S. 226, 65 S. Ct. 1092, 89 LE 1577 at 1581 (1944). Thus, if the parties to a foreign divorce were not domiciled in the particular foreign country, the courts will rarely recognize the validity of the divorce, even where the country had no such domicile requirement. *Turman* v. *Turman,* 99 S.W. 2d 947 (Tex. Civ. App.—Ft. Worth 1936), cert. denied 301 U.S. 698: 13 ALR 3d 1419; 24 AM. Jur. 2d section 1106.

In Texas, when determining the validity of a foreign divorce, a court will assume the divorce law of the foreign country is the same as the divorce law of Texas in the absence of proof to the contrary. *Tallant* v. *State,* 658 S.W. 2d 828 (Tex. Civ. App.—Ft. Worth, 1983); *Webb* v. *Webb,* 461 S.W. 2d 204 (Tex. Civ. App.—San Antonio, 1970). Texas law requires that one of the parties have residence in the State for 6 months and in the county where the divorce is sought for 90 days before the court in the county can assert jurisdiction over the parties. TEX. FAM. CODE ANN. section 321 (Vernon 1986). Because neither the worker nor the claimant was domiciled in Haiti at the time of their divorce, as evidenced by the divorce decree which lists their hometown as Houston, Texas, a Texas court could refuse to recognize the divorce as valid based on jurisdictional grounds.

Even though a Texas court could decline to recognize the claimant's and the worker's Haitian divorce, however, it is SSA's opinion that the claimant would nonetheless be estopped from denying the validity of the divorce. This opinion is based on several grounds.

First, Texas courts have generally held that, where the parties to a foreign divorce have consented to the divorce and have submitted to the jurisdiction of the foreign court, they will be estopped from collaterally attacking the judgment. *Dunn* v. *Tiernan,* 284 S.W. 2d 754 (Tex. Civ. App.—El Paso, 1955, writ ref. n.r.e.) (a husband who obtained bilateral divorce in a Mexican court was estopped from later collaterally attacking the decree). See also *Webb* v. *Webb, supra* (one who has consented to and participated in a foreign divorce is estopped from collaterally attacking the divorce and thus, the issue of whether the parties so participated is one of fact for the jury); *Moody* v. *Moody,* 465 S.W. 2d 836 (Tex. Civ. App.—Corpus Christi, 1971, writ ref. n.r.e.) (a party who participated in a divorce suit, without objecting to the jurisdiction of the court, may not thereafter assail the decree in a collateral proceeding on the theory that one or more of the parties were nonresidents). Additionally, the Fifth Circuit Court of Appeals has recognized and applied this principle of Texas law. In *Diehl* v. *U.S.,* 438 F.2d 705, 708 (5th Cir. 1971), the court stated that as a result of *Dunn* v. *Tiernan,* "it was settled in Texas that a party who seeks and obtains a Mexican divorce is thereafter estopped to deny its validity."

In the situation presented here, even though the claimant was not physically present in Haiti when the divorce decree was rendered, she signed a notarized settlement agreement 6 days before the date of the divorce by which she gave her full and total consent to the divorce. In addition, on that same day, she signed a notarized waiver submitting herself to the jurisdiction of the Haitian court and appointing an attorney to appear on her behalf, which he did. In the absence of some evidence that the claimant was subject to duress or coercion when she signed, it is SSA's opinion that such evidence of consent would be sufficient to allow a Texas court to estop the claimant from challenging the validity of the divorce based on the decisions in *Dunn, Webb,* and *Moody, supra.* No allegations of duress or coercion have been made.

SSA's second basis for concluding that the claimant would be estopped from denying the validity of the divorce is that, in Texas, courts have held that, where a party to an invalid divorce has received money or property pursuant to that divorce, that party will be estopped from later attacking the decree. *Morehouse* v. *Morehouse,* 111 S.W. 2d 831 (Tex. Civ. App.—San Antonio, 1938). Similarly, a Texas court has ruled that when a party has received property pursuant to an annulment decree, the party is estopped from later asserting the invalidity of the decree. *Lunt* v. *Lunt,* 121 S.W. 2d 445 (Tex. Civ. App.—El Paso, 1938).

The evidence of record clearly indicates that the claimant and the worker entered into and signed a property settlement agreement which stipulated that the parties desired a divorce and that the settlement agreement was to be determinative of the disposition of all of the property owned by the parties. This agreement was incorporated into the Haitian divorce decree which ordered the provisions of the agreement to be carried out. Pursuant to the agreement, the worker relinquished any rights he had in the home belonging to the claimant in Boulder, Colorado, and in addition, the claimant was to receive her share of personal and community property. Thus, it appears from the evidence that the claimant did receive property pursuant to the divorce and could therefore be stopped from challenging the divorce on that basis.

A third factor which would weigh against the claimant if she asserted the invalidity of the divorce is the length of time which has expired since the divorce was rendered. Because more than 10 years elapsed between the date of the divorce and the date the claimant applied for benefits, a court could apply laches against the claimant.[1] In Texas jurisprudence, there is support for the proposition that for laches to apply, a mere lapse of time is insufficient; there must also be a resulting disadvantage to another. *Simpson* v. *Simpson,* 380 S.W. 2d 855 (Tex. Civ. App.—Dallas, 1964, writ ref. n.r.e.). Here, there is nothing in the record to indicate that this 10-year lapse has caused a hardship to anyone (e.g., no party has remarried in the intervening 10 years), and therefore SSA

[1] Laches is an equitable doctrine which is defined as a failure to do something which should be done or to claim or enforce a right at a proper time. Black's Law Dictionary (5th Ed. 1979). The effect of laches is to prevent one from bringing a claim after the proper time for bringing the claim has elapsed.

does not believe that laches would be an independent ground for estoppel against the claimant. However, it should be noted that the court in *Dunn* indicated that a delay of 22½ months in attacking a foreign divorce decree would subject the delaying party to a charge of laches and, thus, weighed this factor against the attacking party. SSA believes, therefore, that a delay of 10 years in challenging this decree would be weighed heavily against the claimant in a court's decision on whether to allow such a challenge.

Finally, it should be strongly emphasized that the court's decision on whether to allow the claimant to attack the Haitian divorce decree would be based on principles of equity. As the court stated in *Dunn:*

> Estoppel being an equitable matter and divorce itself being an equitable matter, the principles of equity must apply. This being true it would not be equitable for he who was a party to the fraud and who had benefitted therefrom, to now cry fraud to his own advantaged * * * .

284 S.W. 2d at 767. In the instant case, the claimant fully agreed to the divorce, submitted herself freely to the jurisdiction of the Haitian court, was represented by counsel in the proceeding, and recieved property pursuant to a settlement agreement incorporated into the divorce decree. She then acted in full recognition of the decree as valid by having her last name changed in July of 1977 from her married name to her maiden name, citing the Haitian divorce decree and its failure to restore her maiden name as a reason for making the change. Further, she began filing separate tax returns under her maiden name. The claimant enjoyed whatever benefits she sought from her divorce during the 10-year period that the divorce remained unchallenged. To now find that the divorce was invalid so that the claimant could collect benefits as the deceased worker's widow, in SSA's view, would appear to a court to be clearly inequitable, and SSA therefore concludes that a Texas court would estop the claimant from challenging the divorce.

SSA notes that its operating instructions comport with this conclusion. GN 00305.465 of the Program Operations Manual System (POMS) lists five grounds upon which a party may be estopped from denying the validity of a divorce. Three of these gounds appear to be applicable to this situation. First, GN 00305.465B of the POMS states that a party may be estopped where he or she was the defendant in a divorce action and accepted the court's jurisdiction. As stated above, the claimant gave her full consent and submitted to the jurisdiction of the Haitian court. Next, GN 00305.465D of the POMS states that estoppel may be found where a party has accepted property or money or a property settlement on this basis of the divorce decree. The claimant agreed to the property settlement incorporated into the Haitian divorce and received a home and personal property pursuant to the settlement. Finally, GN 00305.465 E of the POMS notes that estoppel may lie where the party otherwise accepted or acted in recognition of the decree as valid (e.g., knew of the divorce and allowed it to stand unchallenged for a long time). The claimant in this case let her divorce go unchallenged for more than 10 years, and when she had her name changed, she specifically cited the Haitian divorce as one of her reasons for making the change.

In conclusion, the law and facts in this case indicate that, because the worker and the claimant were domiciled in Texas rather than Haiti when the divorce decree was entered, a Texas court could refuse to recognize the Haitian divorce as valid. The claimant, however, is the only person with standing to challenge the decree. Because she submitted to the jurisdiction of the Haitian court, agreed to a property settlement, and then subsequently acted in recognition of the divorce as valid, SSA believes that she would be estopped from denying the validity of the divorce. Therefore, SSA concludes that the divorce would stand as valid, making the claimant ineligible to receive widow's benefits under section 202(e) (1) of the Act. Moreover, because the claimant was married only 4 years prior to the divorce rather than 10 years as required by section 216(d)(1) of the Act, she would also be ineligible as a surviving divorced spouse.

[FR Doc. 91–14989 Filed 6–24–8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–91–7122–09–1101]

Termination of Environmental Impact Statement for Thousand Springs Power Plant Project, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Thousand Springs Power Plant EIS.

SUMMARY: The Bureau of Land Management, Elko District Office, has received notification from Sierra Pacific Resources, legal representative for Thousand Springs Generating Company, to cease all project activities relative to the Thousand Springs Power Plant Environmental Impact Statement (EIS).

The Draft EIS for the proposal was released to the public in January of 1990. The document was analyzing the environmental impacts that would result from a land exchange and the subsequent construction and operation of an eight-unit, 2,000 megawatt, coal-fired power plant and alternatives.

Since August 1990, the project proponents had placed the completion of the Final EIS in suspension. Project termination has now been confirmed, and therefore, a Final Environmental Impact Statement will not be prepared.

Dated: June 14, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91–15006 Filed 6–24–91; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

National Register of Historic Places

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 15, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 10, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Matus, Antonio, House and Property, 856 W. Calle Santa Ana., Tucson, 91000900

FLORIDA

Charlotte County

Smith, H.H., Building [Punta Gorda MPS], 121 E. Marion Ave., Punta Gorda, 91000894

Duval County

Little Theatre, 2032 San Marco Blvd., Jacksonville, 91000895

Hardee County

Carlton, Albert, Estate, 302 E. Bay St., Wauchula, 91000893

MICHIGAN

Menominee County

Wisconsin Land and Lumber Company Office Building, N5551 River St., Meyer Township, Hermansville, 91000901

MINNESOTA

St. Louis County

Wirth Building, 13 W. Superior St., Duluth, 91000896

Stearns County

Church of the Sacred Heart (Catholic), 110 3rd Ave., NE., Freeport, 91000906

NEW JERSEY

Monmouth County

Manasquan Friends Meetinghouse and Burying Ground, NJ 35 at Manasquan Cir., Wall Township, Manasquan, 91000902

PENNSYLVANIA

Butler County

Butler Armony (Pennsylvania National Guard Armories MPS), 216 N. Washington St., Butler, 91000903

Montgomery Country

Stewart, Gen. Thomas J., Memorial Armory (Pennsylvania National Guard Armories MPS), 340 Harding Blvd., Norristown, 91000904

Northumberland County

Milton Armory (Pennsylvania National Guard Armories MPS), 133 Ridge Ave., Milton, 91000905

TENNESSEE

Marion County

Putnam—Cumberland Historic District of Richard City (Cement Construction in Richard City MPS), 1805–1810 Cumberland and 1805—1612 Putnam Aves., South Pittsburg, 91000898

Townsite Historic District of Richard City (Cement Construction in Richard City MPS), 402–512 Dixie, 102–106 Lee Hunt and 2207 Cumberland Aves., South Pittsburg, 91000897

WISCONSIN

Eau Claire County

US Post Office and Courthouse, 500 S. Barstom Commons, Eau Caire, 91000899

A proposed move is being considered for the following property:

MAINE

Penobscot County

Maine Experiment Station Barn, University of Maine Campus, Orono 90001463

The commenting period has been waived for the following property:

NEW YORK

Kings County

Cyclone Rollercoaster, 834 Surf Ave. at W. 10th St., Brooklyn

[FR Doc. 91–15010 Filed 6–24–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 3)]

Intrastate Rail Rate Authority

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Colorado to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective July 25, 1991 and will expire July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359.

Decided: June 18, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–15038 Filed 6–24–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–1 (Sub-No. 236X)]

Chicago and North Western Transportation Co.—Abandonment Exemption—Between Crawford, NE, and Crandall, WY

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: Chicago and North Western Transportation Company (CNW) on June 14, 1991 amended a petition for exemption filed on June 4, 1991 under 49 U.S.C. 10505 to abandon a line of railroad in Nebraska and Wyoming so that it now seeks to abandon only the 42.9-mile line between Crawford, NE and Crandall, WY. We believe that the comments from members of the public, particularly those located in the areas affected by the proposed abandonment, should be sought and considered as part of our consideration of this petition, as amended. In addition, we will hold one or more public hearings in the affected area, at a time and place to be announced, to hear testimony from interested persons about the proposed abandonment.

The CNW will have 10 days to reply to any comments. We will publish notice of this decision in the **Federal Register.** Interested parties will have 20 days following publication to file comments. An original and 10 copies of all comments must be filed with the Secretary of the Commission and copies of all comments must be served on the CNW.

DATES: Comments are due July 15, 1991. CNW replies are due July 25, 1991.

ADDRESSES: Send comments (an original and 10 copies) referring to AB–1 (Sub-No. 236X) to: Office of the Secretary, Interstate Commerce Commission, Case Control Branch, Washington, DC 20423. Send one copy to: Stuart F. Gassner, Esq., Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

Decided: July 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–15039 Filed 6–24–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89–62]

Maryanne Marsilii Isaac, R.Ph., d/b/a Bell Apothecary; Granting of Registration

On October 17, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Maryanne Marsilii Isaac, R.Ph. (Respondent), d/b/a Bell Apothecary, 2045 Fairview Avenue, Easton, Pennsylvania 18042, proposing to deny her application for registration executed on November 1, 1988. The Order to Show Cause alleged that Respondent's registration is inconsistent with the public interest as the term is defined in 21 U.S.C. 823(f).

By letter dated November 15, 1989, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on

May 15 and 16, 1990. The case was subsequently transferred to Administrative Law Judge Mary Ellen Bittner.

On January 31, 1991, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On February 21, 1991, Respondent filed exceptions to Judge Bittner's recommended ruling pursuant to 21 CFR 1316.66. On March 1, 1991, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent has been a licensed pharmacist since 1961 and is currently licensed in the States of Pennsylvania, New Jersey, and Delaware. On June 6, 1986, Respondent purchased Bell Apothecary from Mr. Richard Rosenberg, who continued to work at Bell as a registered pharmacist for a few months after the sale to Respondent. Mr. Wakeem Isaac (Respondent's husband) also worked as a registered pharmacist at Bell until May 1988.

On February 26, 1983, the Pennsylvania Commonwealth's Attorney's Office conducted an audit of Boro Pharmacy. Mr. Wakeem Isaac owned and operated Boro Pharmacy, in which Respondent worked on a part-time basis from 1980 to 1986. The results of the audit indicated excessive and unexplained shortages of Schedule III and IV controlled substances. The audit also revealed numerous recordkeeping violations. Following the audit of his pharmacy, Mr. Isaac was arrested and convicted of five misdemeanor counts of violating Pennsylvania controlled substances recordkeeping requirements. Also he was ordered not to dispense any Schedule II controlled substances for a period of six months from the sentencing date.

On August 11, 1986, Investigators from the Drug Enforcement Administration conducted an audit of Bell Pharmacy that covered the period of June 6, 1986 to August 11, 1986. The audit disclosed overages of 42.72 percent of Dexedrine 5 mg. tablets, 65.63 percent of Dexedrine 10 mg. tablets, and 23.07 percent of Dexedrine 15 mg. tablets; and shortages of 6.68 percent of Percodan tablets and 2.23 percent of Tylox, all Schedule II substances. Two months later, Mr. Isaac supplied the DEA Investigator with additional records from Bell Pharmacy. The Investigator recalculated the audit which, as amended, showed shortages and overages of no more than five percent for any substance audited.

The investigation also revealed that Mr. Isaac had filled at least 56 prescriptions for Schedule II controlled substances during the audit period, notwithstanding the court's order that he not dispense any Schedule II controlled substances until August 28, 1986. Additionally, the investigation revealed that more than 830 dosage units of Percocet, a Schedule II substance, were dispensed to a patient named Jane Morrow, between June 26, 1986 and August 25, 1986. The investigation also revealed that Mr. Isaac dispensed 100 dosage units of Percocet to Ms. Morrow pursuant to an oral prescription, and that no written prescription was ever furnished. Written prescriptions are required for all Schedule II pharmaceuticals.

An Order to Show Cause proposing to revoke the DEA registrations of both pharmacies, Boro and Bell, was issued in December 1986. On April 27, 1988, the then-Administrator, adopting the opinion of the administrative law judge, revoked both registrations. In that case, the Administrator concluded that both Respondent and Mr. Isaac demonstrated their inability to properly operate a pharmacy.

The administrative law judge also found that the Pennsylvania Board of Pharmacy held a hearing pursuant to an administrative complaint issued against Mr. Isaac. The Board concluded that Mr. Isaac failed to properly supervise an unlicensed employee and restrict that employee's access to controlled substances. The Board also concluded that Mr. Isaac had failed to comply with state recordkeeping practices. The Board fined Mr. Isaac $1,000.00 and suspended his license to practice pharmacy for a five-year period beginning November 17, 1988. The first year of the suspension was to be active and the remaining four years probationary. Mr. Isaac was prohibited form working in or around the Boro and Bell pharmacies.

At the hearing in this matter, Respondent offered the testimony of several character witnesses, the witnesses stated that they have seen Respondent operate in a very professional manner and that Respondent has an excellent reputation and is well-respected in the community. Respondent also testified on her own behalf. Respondent asserted that she needs a DEA registration so that she can maintain a complete "patient profile," in order to have a central record of all the medications each customer takes. Respondent testified that her inability to maintain complete customer profiles in her computer records poses safety hazards and that she needs to keep track of all possible contraindications and medical conditions. Respondent also testified that she takes thirty credits of continuing education every two years although she admits that none of the programs she has taken were related to controlled substances.

The administrative law judge further found that Respondent has not been disciplined by the state licensing authorities or convicted of any criminal conduct. There is no contention that Ms. Isaac personally filled prescriptions improperly or for no legitimate medical purposes.

The administrative law judge concluded that the registration of Respondent would not be in the public interest. It is clear that recordkeeping violations occurred at Boro Pharmacy during the time Respondent was working there, and that Respondent failed to detect the serious overages and shortages at the pharmacy. Respondent also permitted her husband to fill prescriptions for Schedule II controlled substances, in violation of the conditions of his February 1986 sentence. Additionally, Respondent permitted her husband to fill prescriptions for excessive amounts of Percocet for one patient. The administrative law judge recommended the denial of Respondent's application for DEA registration.

Respondent filed exceptions to the findings of the administrative law judge, stating essentially that Respondent is being held accountable for the "sins" of her husband. Respondent also states that Mr. Isaac has had no involvement whatsoever in the operation of Bell Apothecary since 1988. Respondent also asserted that the Government has presented no evidence of wrongdoing since the issuance of the 1988 Final Order.

After considering all of the evidence, including the opinion and recommended ruling of the administrative law judge, the Administrator has decided not to deny Respondent's application. The Administrator concludes that there is sufficient evidence in the record to believe that Respondent, given the opportunity, will utilize a DEA registration in a responsible manner.

The Administrator does impose the following restrictions upon the DEA registration to be issued to Respondent:

1. Mr. Isaac shall have no involvement whatsoever with Bell Apothecary in any role including ownership, management, or as an employee.

2. For at least two years from the date on which the registration herein is issued, Respondent shall submit a log of all purchases of controlled substances made during the previous calendar quarter to the Special Agent in Charge of the DEA Philadelphia Field Division or his designee.

3. Respondent shall, by acceptance of a registration, consent to unannounced inspections of Bell Apothecary without an administrative inspection warrant. Such inspections shall be for the purpose of determining Respondent's compliance with both the terms of this order and all pertinent requirements of the Controlled Substance Act and the regulations thereunder.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b), hereby ordered that the application for DEA registration submitted by Maryanne Marsilii Isaac, R.Ph., d/b/a Bell Apothecary, on November 1, 1988, for registration under the Controlled Substances Act be, and it hereby is, granted, subject to the conditions enumerated above. This order is effective June 25, 1991.

Dated: June 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–14990 Filed 6–24–91; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 91–10]

D-Tek Enterprises; Revocation of Registration

On February 21, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to D–Tek Enterprises, Inc., (Respondent), 20802 Ramita Trail, Boca Raton, Florida 33433. The Order to Show Cause proposed to revoke Respondent's DEA Certificates of Registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest as set forth in 21 U.S.C. 823(f) and 824(a). The specific grounds for that contention included Respondent's failure to meet the controlled substances recordkeeping, accountability and security requirements set forth in title 21, Code of Federal Regulations, parts 1301, 1304 and 1305, Respondent's failure to report a loss of controlled substances, and Respondent's false representation of its employees' authority to handle controlled substances.

On March 5, 1991, in response to the Order to Show Cause, Respondent, through its owner and president, Roy K. Slingo, submitted a written statement, together with supporting documents, which consisted of advertisements and letters of support written by representatives of some of the schools that worked with the Respondent company. In this statement, Mr. Slingo set forth objections to the allegations in the Order to Show Cause, and also stated that he submitted the statement in lieu of a request for a hearing, since be believed that it could "more clearly and thoroughly describe the details of the situation." However, Mr. Slingo also stated that he would be "willing" to attend a hearing should the administrative law judge presiding over the matter have "further questions" after reading the statement.

By letter dated March 15, 1991, the administrative law judge informed Mr. Slingo that under 21 CFR 1301.54, and as specified in the Order to Show Cause, the Respondent may file a written statement of position or request a hearing. The judge advised Mr. Slingo that if he did not intend to request a hearing, his statement with the attached documents and the agency investigative file, which formed the basis of the Order to Show Cause, would be forwarded to the Administrator, who, based on his review of these documents, would issue his final order. The administrative law judge directed Mr. Slingo to specifically request a hearing, if he so desired, on or before April 1, 1991. Otherwise, the judge would assume that Mr. Slingo had waived his opportunity for a hearing, and the investigative file and the statement submitted on behalf of Respondent would be forwarded to the Administrator for his consideration. See 21 CFR 1301.54 (d), (e).

No request for a hearing was filed on behalf of Respondent by Mr. Slingo or by any other person. By notice dated April 5, 1991, the administrative law judge subsequently assigned to the matter stated that Mr. Slingo had submitted a written statement in lieu of a request for a hearing under 21 CFR 1301.54(c), said statement to be considered in the entry of a final order in this matter.

The Administrator has considered the record in its entirety, including the investigative file and the written statement and documents submitted by Mr. Slingo. Pursuant to 21 CFR 1316.67, the Administrator hereby enters his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Respondent holds two DEA researcher registrations, one for Schedule I and the other for Schedules II–V. Under the authority of these registrations, Respondent trains dogs to detect controlled substances such as marijuana and cocaine. Respondent also operates a private drug deterrent program in which he contracts with local public school administrations to have dogs attempt to detect the presence of illicit drugs on school property. Mr. Slingo states that Respondent also educates students with respect to the dangers of drug abuse.

On October 20, 1989, DEA Investigators served a Notice of Inspection at the premises of the Respondent corporation. Mr. Slingo voluntarily signed the consent for inspection. The Investigators were provided Respondent's DEA order forms and distribution records of controlled substances to employees. A review of the order forms showed that Respondent had failed to record the number of packages of controlled substances received and the dates they were received, in violation of 21 CFR 1305.09(e). Further, the Investigators discovered that Respondent had failed to record all purchases of marijuana, a Schedule I controlled substance, on DEA order forms, in violation of 21 U.S.C. 827, 828, and 21 CFR 1305.03, which requires that all purchases of Schedules I and II controlled substances be so recorded. Additionally, Respondent had purchased marijuana from the Dade County School Board, which is not registered with the DEA to handle controlled substances. Under 21 CFR 1305.08, only a properly registered entity may fill order forms for Schedule I and II controlled substances.

The Investigators also observed during their inspection that both marijuana and cocaine were stored in an unlocked refrigerator. 21 CFR 1301.75 requires that all Schedule I and II controlled substances be kept in a securely locked, substantially constructed cabinet. Furthermore, Mr. Slingo admitted to the Investigators that Respondent's employees stored controlled substances in their homes, none of which were registered locations, in violation of 21 CFR 1301.23.

The Investigators also found that Respondent maintained no inventory of controlled substances, either initial or biannual, as required under 21 CFR 1304.12 and 1304.13. They also discovered that one of Respondent's employees had lost approximately two grams of cocaine, a Schedule II controlled substance, which Respondent failed to report to the DEA. 21 CFR 1301.74(c) requires a registrant to notify the DEA of any theft or significant loss

of any controlled substance upon discovery of such theft or loss.

Finally, it was revealed to the Investigators that Mr. Slingo had issued employment identification cards to Respondent's employees which falsely represented their authority to handle controlled substances. These cards stated that Respondent's registration "entitles officially registered employees to confiscate, possess, hold and dispose of all schedules of drugs declared to be contraband and otherwise controlled by [the] Federal Controlled Substances Act." The Investigators advised Mr. Slingo during the inspection that Respondent's employees were not registrants under the Controlled Substances Act, and that Respondent's registration as a dog handler did not allow its employees to possess controlled substances other than to train dogs in drug detection.

During the inspection, Mr. Slingo stated to the Investigators that no one had ever explained to him or his wife, the vice-president of the Respondent corporation, the pertinent recordkeeping requirements under the Controlled Substances Act. However, on three separate occasions, in October and November of 1983, and in September of 1986, three different DEA Investigators had explained to Mr. and Mrs. Slingo the pertinent recordkeeping, accountability and security requirements, appropriate drug destruction procedures, and the reporting requirements for the theft or loss of controlled substances under the Controlled Substances Act. During the inspection on October 20, 1989, the DEA Investigators again explained these requirements to Mr. Slingo.

In his written statement, Mr. Slingo maintains that he was never "given instructions" regarding recordkeeping requirements, which ostensibly accounted for Respondent's noncompliance with these requirements. Additionally, he states that Respondent failed to keep records reflecting purchases of marijuana because Respondent did not in fact purchase marijuana; it was "given" to them by security personnel of the schools which hired Respondent. He also claims that he was never instructed regarding the reporting requirements of any significant theft or loss of controlled substances; thus, the employee's loss of controlled substances was not reported to the DEA. Mr. Slingo also admits that controlled substances were kept in a refrigerator on Respondent's premises, but that they were "subsequently removed and placed in the safe." Finally, Mr. Slingo states that he did not falsely represent his employees' authority to handle controlled substances, since it was "obvious" that Respondent's employees would be "carrying off these drugs off office premises." Indeed, Mr. Slingo believed the identification cards to be a "good idea."

Having duly considered the investigative file and Mr. Slingo's statement as well as the attachments in support of his statement, the Administrator finds that in light of Respondent's numerous recordkeeping, accountability, and security violations, the failure to properly report the significant loss of a controlled substance, and the false representation of the employees' authority to handle controlled substances as reflected in the identification cards, its continued registration is contrary to the public interest. Registrants always bear the responsibility to comply with all requirements under the Controlled Substances Act, and professed ignorance of these requirements is no defense. Even if it were, DEA reports show that DEA Investigators informed both Mr. Slingo and his wife of pertinent requirements under the Controlled Substances Act on three separate occasions, despite Mr. Slingo's statements to the contrary.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, PD0229244 and PD0228242, previously issued to D-Tek Corporation be, and they are hereby, revoked. It is further ordered that any pending applications for renewal of those applications be, and they are hereby, denied.

This order is effective July 25, 1991.

Dated: June 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-14996 Filed 6-24-91; 8:45 am]

BILLING CODE 4410-09-M

Joseph H. Kennedy, III, M.D.; Revocation of Registration

On March 11, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph H. Kennedy, III, M.D. (Respondent), 2904 Fox Run Court, Mobile, Alabama 36619, proposing to revoke his DEA Registration, AK2766876, issued to him at 492 Dixie Street, Sparta, Georgia 31087, and to deny any pending applications for renewal of such registration as a practitioner. The statutory basis for seeking the revocation of Respondent's DEA Certificate of Registration was that Dr. Kennedy lacked state authorization to practice medicine and that his continued registration was inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Kennedy by registered mail, return receipt requested. The return receipt indicates that the Order to Show Cause was received on March 14, 1991. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Kennedy is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that on or about April 8, 1987, Respondent had his privileges at the Lyster Army Hospital, Fort Rucker, Alabama summarily terminated for inappropriate behavior toward a female patient. On October 27, 1988, Respondent's medical license in the State of Kentucky was revoked. This decision was based on Respondent's unprofessional conduct, professional imcompetence and malpractice. Respondent also had his license to practice medicine in the State of Illinois suspended for an indefinite period for unprofessional conduct, professional incompetence and malpractice. Further, on July 28, 1988, the Hancock Memorial Hospital of Sparta, Georgia denied Respondent medical staff membership for misstatements and omissions on Respondent's application for privileges there.

The Administrator also finds that Respondent was charged with the felony offense of performing illegal abortions and engaging in the practice of medicine without a medical license. On April 26, 1989, he pled guilty to the misdemeanor offense of conspiracy to perform abortions without a medical license in the State of Tennessee.

Further, the Administrator finds that on April 16, 1990, Respondent's license to practice medicine in the State of New York was revoked for professional misconduct involving inappropriate sexual advances to three female patients and that his medical license in the State of Georgia was revoked in January, 1991. Therefore, Respondent is without authority to practice medicine in the State of Kentucky, Illinois, New

York and Georgia, the state in which he was last found.

State authorization to dispense controlled substances is a prerequisite of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). DEA has consistently held that when an applicant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See, Emerson Emory, M.D., Docket No. 85–46, 51 FR 9543 (1986); Michael Alva Marshall, M.D., Docket No. 85–16, 51 FR 8046 (1986); Dennis Howard Harris, M.D., Docket No. 84–19, 49 FR 39930 (1984).

The Administrator concludes that since Dr. Kennedy is not authorized to practice medicine in Georgia, there is a lawful basis for the revocation of his DEA Certificate of Registration. Accordingly, the Administrator of the Drug Enforcement Adminsitration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK2766876, previously issued to Joseph H. Kennedy, III, M.D., be and it hereby is, revoked. Any pending application for renewal of such registration shall be, and hereby is, denied. This order is effective July 25, 1991.

Dated: June 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–14997 Filed 6–24–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information: The Agency of the Deparmtent issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions:

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment Standards Administration.

Work Day Report.

1215–0168; ESA 92.

Quarterly.

Individuals or households; State or local governments; farms; businesses or other for profit; Federal agencies or employees; small businesses or other organizations.

52,000 respondents, 21,028 total hours; 26 minutes per response; 1 form.

Section 210A of the Immigration and Nationality Act requires employers of reportable workers in seasonal agricultural services through September 30, 1992, to certify such workers employment to the Federal Government. This information is used to determine the number of workers to be admitted to the U.S. to meet any shortage.

Work Experience and Career Exploration Programs.

1215–0121.

Biennially.

Individuals or households; State or local governments.

7 respondents; 13 recordkeepers; 129 total hours; 1 hour per response State educational agencies are required to file applications for approval of Work Experience and Career Exploration Programs which provide exceptions to the child labor regulations issued under the Fair Labor Standards Act. State educational agencies are also required to maintain certain records with respect to approved WECEP programs.

Employment and Training Administration.

Employment Service Program Reporting System.

1205–0240; ETA 9002A–C, VETS A&B, VETS 300.

Form #	Affected public	Respondents	Frequency	Average time per response
ETA 9002A–C (Operation)	States	54	Quarterly	3 hours.
ETA 9002A–C (Programming)	States	54	One-time	30 minutes.
Recordkeeping	States	54	One-time	12 hours.
VETS 200A	States	54	One-time	45 minutes.
VETS 200B	States	54	Quarterly	45 minutes.
VETS 300	States	54	Quarterly	1 hour.

1,864 total hours.

Employment Service Program Reporting System is to provide data on State public employment service agency program activity and expenditures, including services to veterans, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and Training Service in program administration and to provide reports to the President and Congress.

Extension

Employment Standards Administration.

Request for Medical Reports.

1215–0106; LS–158, LS–415; LS–525.

On occasion.

Businesses or other for profit; small businesses or organizations.

2,250 respondents; 1,260 total hours; ½ hour per response; 3 forms.

Medical reports are used by the Longshore and Harbor Workers' Compensation Act Program to support injured workers claims for compensation benefits under section 7 of the Longshore Act (33 U.S.C. 901 *et seq.*) as amended and extended.

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services.

1215–0169; 29 CFR part 502.

Recordkeeping.

Individuals or households; State or local governments; farms; businesses or other for profit; Federal agencies or employees; small businesses or organizations.

52,000 recordkeepers; 52,000 total hours; 1 hour per recordkeeper.

Section 210A of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) requires any employer to report information about the quantity of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal Government and to any individual replenishment agricultural worker.

Signed at Washington, DC this 20th day of June, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91–15074 Filed 6–24–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–25,523 TA–W–25,523A TA–W–25,523B]

Asarco Wallace, ID; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 3, 1991, applicable to all workers of Asarco-Coeur Unit, Wallace, Idaho. The notice was published in the **Federal Register** on May 21, 1991 (56 FR 23302).

At the request of the State Agency, the Department reviewed its certification for workers of Asarco's Coeur Unit in Wallace, Idaho. Investigation findings show that Asarco's Assay Office and the Morning Shop were integrated with the production at the Coeur Unit and that a substantial amount of their activities was performed for the Coeur Unit of Asarco. Accordingly, when the Coeur Unit ceased operations, a reduction in activity and employment occurred at the Assay Office and the Morning Shop.

The notice applicable to TA–W–25,523 is hereby issued as follows: All workers of Asarco-Coeur Unit, Wallace, Idaho, who became totally or partially separated from employment on or after February 27, 1990 and all workers of the Assay Office, Wallace, Idaho and the Morning Shop, Wallace, Idaho who became totally or partially separated from employment on or after February 27, 1990 and before June 22, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–15072 Filed 6–24–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 363,TA–W–25, 364]

Robesonia, PA; Revised Determination on Reconsideration

On June 7, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Gloray Knitting Mills, Inc., and Gloray Knitting Mills Retail Outlet in Robesonia, Pennsylvania.

The Gloray Knitting Mills plant produced men's sweaters. The plant had declining sales and production in 1990 and ceased operations in early 1991 along with the retail outlet. The retail outlet handled only domestic production.

Findings on reconsideration show that a major customer was not included in the survey. The customer, another manufacturer, accounted for a substantial portion of Gloray Knitting Mills' 1990 sales decline and was recently certified for trade adjustment assistance. In 1990 the men's sweater industry's imports to shipments ratio was over 300 percent. Also, in 1990, the International Trade Commission found injury to the domestic sweater industry because of dumping from Hong Kong, Korea and Taiwan.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with men's sweaters produced at Gloray Knitting Mills, Inc., Robesonia, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers at Gloray Knitting Mills, Robesonia, Pennsylvania. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Gloray Knitting Mills, Inc., Robesonia, Pennsylvania and Gloray Knitting Mills Retail Outlet, Robesonia, Pennsylvania who became totally or partially separated from employment on or after January 24, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of June 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–15071 Filed 6–24–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 554]

Irwin Automotive/Takata, Inc., Dandridge, IN; Revised Determination on Reconsideration

On June 5, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Irwin Automotive/Takata, Inc., Dandridge, Tennessee.

The Dandridge plant produces automobile seat trim—headrests,

armrests, jump seats etc. The plant had declining sales and production in fiscal year (FY) 1991 compared to FY 1990.

In 1990, Dandridge's production of armrests and headrests was moved to Mexico and imported back into the U.S. Also, jump seat production at Dandridge in 1990 was transferred to Mexico and is currently being imported into the U.S. The loss of this production accounted for a substantial portion of total production at Dandridge.

Further, all remaining production at Dandridge is scheduled to be transferred to Mexico and imported back into the U.S.

Substantial worker separations resulted from the loss of the armrest/headrest and the jump seat orders in 1990.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with automotive trim produced at Irwin Automotive/Takata, Inc., Dandridge, Tennessee contributed importantly to the decline in sales or production and to the total or partial separation of workers at Irwin Automotive/Takata, Inc., Dandridge, Tennessee. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Irwin Automotive/Takata, Inc., Dandridge, Tennessee who became totally or partially separated from employment on or after March 6, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15073 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,375]

Sun Plywood, Inc., North Bend, OR; Revised Determination on Reconsideration

On May 31, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Sun Plywood, Inc., North Bend, Oregon.

The North Bend facility produced mainly plywood. The plant closed on July 17, 1990. Nearly all workers were laid off by August 1990.

No customer survey was conducted during the initial investigation since aggregate U.S. imports of softwood plywood and veneer were negligible during the period relevant to the petition.

New findings on reconsideration, however, show that Sun Plywood had two main customers that import products (wafer board and stand board) which compete with the plywood produced at Sun Plywood. Both customers reduced their purchases from Sun Plywood in 1990 and increased their imports. The worker group of one of the customers is currently under certification.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the plywood produced at Sun Plywood, Inc., North Bend, Oregon contributed importantly to the decline in sales or production and to the total or partial separation of workers at Sun Plywood, Inc., North Bend, Oregon. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Sun Plywood, Inc., North Bend, Oregon who became totally or partially separated from employment on or after January 24, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15070 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, July 11, 1991, in suite N-4437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Sixty-Eighth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to review and provide input as to the desired scope and agenda being prepared by each of the Council's work group i.e., Enforcement; Retiree Medical Benefits; Small Business, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 8, 1991 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 8, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-14992 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Small Business of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m. Wednesday, July 10, 1991, in room S-4215 C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Small Business Working Group was formed by the Advisory Council to study issues relating to Small Business for employee benefit plans covered by ERISA.

The purpose of the July 10 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the

Working Group should submit written requests on or before July 5, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–14993 Filed 6–24–91; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Retiree Medical Benefits of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1 p.m. Wednesday, July 10, 1991, in room S–4215 C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the July 10 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 5, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–14994 Filed 6–24–91; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11 a.m. Wednesday, July 10, 1991, in rooms S–4215 C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Enforcement Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee benefit plans covered by ERISA.

The purpose of the July 10 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 5, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5, 1991.

Signed at Washington, DC this 19th day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–14995 Filed 6–24–91; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee; Meeting

A meeting of the Telecommunications Service Priority System Oversight Committee will be held on Tuesday, July 9, 1991, from 9 a.m. to 2 p.m. The meeting will be held at the MITRE-Hayes Building, 7525 Colshire Dr., McLean, VA 27006. The agenda is as follows:

A. Committee Administration
B. Selection of Chair
C. Review/Discussion of By Laws
D. TSP Program Office Update
E. Review of Quarterly Report
F. Discussion of Future TSP Issues/ Scheduling of Next Meeting

The meeting will be open to the public. Any person desiring information about the meeting may telephone (703) 692–9274 or write the Manager, Nationa Communications System, 701 S. Court House Rd., Arlington, VA 22204–2199.

Dennis I. Parsons,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 91–15030 Filed 6–24–91; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Advancement Phase One Review Committee Section) to the National Council on the Arts will be held on July 10–11, 1991 from 9 a.m. – 5:30 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on July 10 from 9 a.m. – 10 a.m. and July 11 from 4:30 p.m. – 5:30 p.m. The topics will be opening remarks

and introductions, overview of Advancement, and policy discussion.

The remaining portions of this meeting on July 10 from 10 a.m. – 5:30 p.m. and July 11 from 9 a.m. – 4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–15034 Filed 6–24–91; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 12, 1991 from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10 a.m. and 4:30 p.m.-5:30 p.m. The topics will be opening remarks and introductions, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for this Arts, Washington, DC 20506, or call (202) 682-5433.

Robbie McEwen

Acting Advisory Committee Management Officer, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 91-15035 Filed 6-24-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under section 274.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are required as occasioned by the occurrence of specified events, such as the receipt or transfer of licensed radioactive material, or actual or attempted theft of licensed material. An annual statement of source material inventory is required.

5. Who will be required or asked to report: Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. An estimate of the number of responses: 63.

7. An estimate of the total number of hours needed to complete the requirement or request: 2.38 hours per response, for a total of 150 hours annually.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States over which NRC regulatory authority continues, including certain information collection requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0032), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of June 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–15095 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–390 and 50–391]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion dates specified in Construction Permit Nos. CPPR–91 and CPPR–92 issued to Tennessee Valley Authority (permittee) for the Watts Bar Nuclear Plant, Units 1 and 2. The facility is located at the permittee's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–91 to December 31, 1993 and the latest construction completion date of Construction Permit No. CPPR–92 to June 30, 1997. The proposed action is in response to the permittee's request dated May 16, 1991.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet fully completed. The permittee states that completion of Unit 1 will continue to be delayed pending review and implementation of a comprehensive plan consisting of corrective action programs (CAPs), special projects (SPs), inspections, audits, and walkdowns to provide assurance that WBN Unit 1 is designed and constructed in accordance with regulatory requirements and TVA commitments. Since the time of the last extension request, TVA has been engaged in extensive efforts to resolve problems which this comprehensive program was designed to address as well as problems which were discovered in the course of implementing the plan. These efforts include inspections, document reviews, and where necessary, redesign and/or modification of affected structures, systems, and components.

In addition to the significant amount of work associated with these efforts, TVA has also recently halted Unit 1 construction activities in order to improve work control practices. The delays associated with the above efforts to ensure that WBN meets regulatory requirements and licensing commitments make it necessary for TVA to request an extension of the expiration date for Construction Permit No. CPPR–91 until December 31, 1993.

With regard to Unit 2, TVA is committed to applying lessons learned from the Unit 1 corrective programs to the Unit 2 completion of construction and startup efforts and appropriately staging construction activities. Given the activities described above and the resulting delays at WBN Unit 1, TVA requests an extension of the expiration date for Construction Permit No. CPPR–92 (Unit 2) until June 30, 1997.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in the staff's Final Environmental Statement (FES) issued on November 9, 1972 for the construction permit stage which covered construction of both units. The FES issued in December 1978 for the operating license stage addressed the environmental impacts of construction activities not addressed previously. These activities included: (1) Construction of the new transmission route for the Watts Bar—Volunteer 500 kV line, (2) construction of the settling pond for siltation control for construction runoff at a different location from that originally proposed in the Final Environmental Statement—Construction Permit (FES–CP), and (3) the relocation of the blowdown diffuser from the originally proposed site indicated in the FES–CP. The staff addressed the terrestrial and aquatic environmental impacts in the Final Environmental Statement—Operating License (FES–OL) and concluded that the assessment presented in the FES–CP remains valid.

The construction of Unit 1 is essentially 100 percent complete and Unit 2 is approximately 75 percent complete; therefore, most of the construction impacts discussed in the FES have already occurred. Since this action would only extend the period of construction as described in the FES, it does not involve any different impacts as described and analyzed in the original envronmental impact statement. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the permittee more time to complete construction in accordance with the previously approved construction permit. The activities related to the various corrective activities will result in additional workforce, being primarily engineering and technical personnel rather than construction workforce. At the present time, this workforce is basically dedicated to the completion of Unit 1. This increase will be temporary and will decline as the corrective activities are completed and Unit 1 approaches fuel loading. A large percentage of the additional workforce are contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the permittee would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural states. This would be a slight environmental benefit, but much

outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Contacted

The NRC staff reviewed the permittee's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated May 16, 1991 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 18th day of June, 1991.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Project Directorate II–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–15097 Filed 6–24–91; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, AND STN 50–457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulation Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (the licensee), for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois, and Facility Operating License Nos. NPF–72 and 77, issued to the licensee for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

By letter dated March 17, 1989, the licensee proposed to amend Technical Specification (TS) 4.5.2. to modify the existing surveillance requirements for venting of Emergency Core Cooling System (ECCS) discharge piping. A Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing on that request was published in the **Federal Register** on April 21, 1989 (54 FR 16177). By letter dated March 12, 1990, the licensee supplemented the amendment request by stating that only the ECCS pump casings and the discharge piping high points outside of containment will be vented at least once per 31 days.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 25, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the requst and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity reequirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 17, 1989 (published in the **Federal Register** on April 21, 1989 (54 FR 16177)) as supplemented on March 12, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 17th day of June 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–15093 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Philadelphia Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–56, issued to Philadelphia Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station, Unit 3 located in Delta, York County, Pennsylvania.

The amendment would change sections 3.3.B.1 and 4.3.B.1 of the Peach Bottom Unit 3 Technical Specifications to allow operation with control rod 38–23 not coupled to its drive for the remainder of cycle 8, which is to be completed before October 30, 1991. During the repositioning of this rod, which is presently fully inserted and electrically disarmed, it would modify the surveillance requirements to require rod position verification by use of neutron instrumentation.

The amendment is being proposed on an exigent basis in accordance with 10 CFR 50.91(a)(6). The exigent circumstances are that the unit is presently restricted in power by approximately 4 percent of the electrical output due to restrictions associated with operation with control rod No. 38–23 being declared inoperable. This unit derating results in the need for replacement power during the summer months when electrical demand is at its highest. During May 1991, the Pennsylvania-New Jersey-Maryland Interconnection (PJM) electrical grid was placed in a maximum emergency generating situation on two consecutive days because of high regional temperatures. The potential for this emergency electrical generating situation to occur again during the remainder of the units' operating cycle is considered to be high. Therefore, the ability to return the unit to full generating capacity would provide additional assurance of power production availability on the PJM grid.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This amendment incorporates compensatory actions in the Technical Specifications to assure that even with an uncoupled rod the rod position is known, that no other uncoupled rods are withdrawn, and that scram performance remains intact.

b. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The compensatory measures included in the Technical Specification changes assure that no new or different kind of accident is possible.

c. The proposed amendment does not involve a significant reduction in the margin of safety as the limiting event is the [control rod drop accident] CRDA and all fuel limits stipulated in that analysis will be met when the compensatory measures included in Technical Specification changes are implemented.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination

unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 25, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition with requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiratioin of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commisson, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commisson, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, S26–1, Philadelphia,

Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respct to this action, see the application for amendment dated June 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 19th day of June 1991.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–15094 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–460]

Washington Public Power Supply System Nuclear Project No. 1; Order Extending Construction Completion Date

Washington Public Power Supply System is the current holder of Construction Permit No. CPPR–134, issued by the Nuclear Regulatory Commission on December 23, 1975, for construction of WPPSS Nuclear Project No. 1 (WNP–1). On June 16, 1983, the construction completion date for WNP–1 was extended from January 1, 1982 to June 1, 1991. The facility is presently in a deferred construction status at the applicant's site on the Department of Energy's Hanford Reservation in Benton County, Washington, approximately eight miles north of Richland, Washington.

On April 18, 1991, as supplemented on May 22, 1991, the Washington Public Power Supply System (WPPSS or applicant) filed a request for another extension of the completion date. This extension has been requested because construction has been delayed by the following events and conditions:

1. The temporary lack of demand for the energy to be produced by WNP–1 (WNP–1 is presently included in the list of potential power resources necessary to meet the projected electrical demand growth in the Pacific Northwest in coming years);

2. The Bonneville Power Administration (BPA) request that WNP–1 be placed in a preserved condition for future potential power resource needs;

3. Regional power planning projections indicate that the earliest resumption of engineering, construction activities may be July 1993; and

4. The allowance of a 72-month construction period to complete WNP–1 and a margin of uncertainties such as those associated with regional load growth or time to start-up the project to full construction making a revised construction completion date of June 1, 2001.

WNP–1 is being maintained by WPPSS as a deferred plant pursuant to the Commission's Policy Statement on Deferred Plants, 52 FR 38077, October 14, 1987. Accordingly, the NRC staff has determined that WNP–1 is a deferred plant as defined by the Commission in the policy and that it is, therefore, subject to any applicable provisions of the policy set forth there.

Good cause has been shown for the delays; the causes were beyond the control of the applicant; and the requested extension is for a reasonable period, the bases for which are set forth above, and in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (56 FR 27547 on June 14, 1991).

The NRC staff's safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

It Is Hereby Ordered That the latest completion date for Construction Permit No. CPPR–134 is extended from June 1, 1991 to June 1, 2001.

Date of Issuance: June 18, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–14981 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29318; File No. SR–NYSE–89–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Containing Proposals Recommended by the Market Regulation Review Committee of the New York Stock Exchange

I. Introduction

On February 24, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change containing proposals recommended by its Market Regulation Review Committee. On March 12, 1990 the Exchange filed Amendment No. 1 [3] to the proposed rule change. On December 21, 1990, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

Noticed of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27941, April 24, 1990), and by publication in the **Federal Register** (55 FR 18206, May 1, 1990). The Commission received two comments on the proposed rule change.[5]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] Amendment No. 1 to File No. SR–NYSE–89–02 withdrew certain provisions of the Exchange's original rule filing and resubmitted them in a separate rule filing in order to expedite the Commission's consideration of the Committee's recommendations. See File No. SR–NYSE–90–10. See also letter from Howard Kramer, Assistant Director, Division of Market Regulation, SEC, to Brian McNamara, Managing Director, Market Surveillance, NYSE, dated June 29, 1989.

[4] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 21, 1990. Amendment No. 2 to File No. SR–NYSE–89–02 makes several technical and conforming changes to the Exchange's original proposal, as well as deletes the proposed changes to NYSE rules 123A.65, .71, and .72. See also letter from Brian McNamara to Mary Revell, dated January 31, 1991, which made a minor editorial change to the NYSE's proposed booth wire policy.

[5] See infra note 7 and accompanying text. In an Information Memo dated August 24, 1987, the

Continued

This order approves the proposed rule change.

II. Discussion

A. Introduction

In December 1985, the NYSE's Board of Directors established the Market Regulation Review Committee ("Committee") to examine the structure of market trading regulation. The Committee was charged with reviewing existing regulations to enable the Exchange, in a manner consistent with maintaining market integrity and protecting investors, to compete more effectively with its current and future competitors, to provide additional intra-market trading opportunities for all Exchange market participants, and to eliminate requirements that may no longer serve a meaningful regulatory response.

The proposed rule change reflects the recommendations of the Committee.[6] The specific proposals fall within four broad categories, namely, "general auction market rules," "trading rules applicable to specialists," and "member proprietary and on-floor trading." In addition, the Exchange has proposed two new rules: an "exchange automated order routing systems rule (rule 123B)" and a "specialist booth wire policy."

The Commission received comment letters on the proposed rule change from two NYSE specialist firms, Corroon, Lichtenstein & Co. and Equitrade Partners.[7] The specialist commentators argued in favor of Commission approval of the proposed rule change. Specifically, Corroon, Lichtenstein & Co. and Equitrade Partners argued in favor of Commission approval of proposed amendments to NYSE Rules 104, 116, and 440B. These proposed amendments have been withdrawn by the Exchange and resubmitted in File No. SR–NYSE–90–10, however, which is still under Commission review.[8] Accordingly, these comments will be considered during the Commission's review of File No. SR–NYSE–90–10.

B. Commission Findings

The Commission has reviewed carefully the NYSE's proposed rule change and concludes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with sections 6(b)(5), 6(b)(8), 11(b), and 11A(a)(1) of the Act.[9] The Commission supports the NYSE's efforts to continue to review the structure of market trading regulation in response to changes in market structure. The Commission believes it important to market quality that the Exchange have a regulatory program that is tailored to the current market structure, especially in light of the significant role played by the NYSE as the largest securities market in the U.S.. The Commission agrees with the NYSE that the proposed rule change will be helpful in updating the NYSE market structure and trading rules and will further the purposes of the Act. The Commission's detailed discussion regarding the significant changes proposed by the NYSE follows:

C. General Auction Market Rules

1. Rule 61: Recognized Quotations

The Exchange proposes to amend NYSE Rule 61, which governs "recognized quotations," to clarify that bids or offers for oddlots (*i.e., for an amount less than 100 shares)* have no standing as recognized quotations in the trading crowd at a specialist post. The Exchange also proposes a second amendment to rule 61 that would change the execution procedures for an order that includes one or more trading units and an odd-lot.[10] The proposal would require the odd-lot portion of the order to be processed and executed by the Exchange's rule 124 odd-lot pricing system,[11] and would preclude it from being printed on the tape.

A third amendment to rule 61 would clarify that special offerings, exchange distributions and secondary distributions as specified in rules 391, 392 and 393,[12] and the printing of such transactions on the Tape, are not precluded by this rule. This amount recognizes that special distributions, due to their generally larger size and consequently greater market impact, require special handling and are often arranged outside of the regular market.

Because rule 55 establishes the standard unit of trading in stocks on the Exchange as 100 shares, the Commission believes it is logical to conform rule 61 to operate consistent with both the trading unit definition contained in rule 55 and to clarify that an order that includes an odd-lot can be sent to the specialist, but will be executed by the Exchange's odd-lot system. The Commission also believes that the amendment to rule 61 governing special distributions should dispel any potential confusion as to rule 61's application to the execution procedures codified in rules 391, 392, and 393, and should make it clear that such transactions may be effected and printed on the tape.

2. Rule 70. Below Bid—Above Best Offer

Rule 70 is a basic auction market rule which provides that when a bid is clearly established, no lower bid shall be made and conversely, when an offer is clearly established, no higher offer shall be made. The proposed change to this rule would retain this basic principle, while clarifying that any bid or offer that is accepted results in a binding trade.[13]

The proposed rule change also would clarify the long-standing Exchange policy that a bid which is at or above an offer results in a trade in an amount equal to the bid or the offer, whichever is the smaller amount. The same principle would apply when an offer is made at or below a bid.[14] The Exchange believes that this concept is necessary to the orderly functioning of the auction market because the absence of such a provision could create "locked markets."

The Commission believes that these revisions are appropriate clarifications

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Exchange summarized the recommendations of the Market Regulation Review Committee, and requested its members and member organizations to comment on them. The Exchange states that no written comments were received in response to this Information Memo with regard to any rule change that is the subject of this order.

[6] The texts of the actual Exchange rules to be amended and complete descriptions of the proposed amendments are set forth in the Exchange's original filing and in Amendments No. 1 and 2 thereto, both of which are available for inspection at the Commission and at the principal office of the NYSE.

[7] See letter from George A. Corroon, Jr., Partner, Corroon, Lichtenstein & Co., to Jonathan G. Katz, Secretary, SEC, dated May 31, 1990, and letter from Robert M. Newman, Jr., Partner, Equitrade Partners, to Jonathan G. Katz, Secretary, SEC, dated June 11, 1990. The Corroon, Lichtenstein & Co. and Equitrade Partners comment letters also addressed File No. SR–NYSE–90–10. See *supra* note 3.

[8] See *supra* note 3.

[9] 15 U.S.C. 78f(b)(5), 78f(b)(8), 78k(b), and 78k–1(a)(1) (1988).

[10] The normal unit of trading in stocks is 100 shares. See NYSE rule 55.

[11] See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 27981 (order approving File No. SR–NYSE–90–06, amending Rule 124), and Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (order approving File No. SR–NYSE–91–3, implementing a program that eliminates odd-lot differentials and floor brokerage charges).

[12] NYSE rules 391, 392, and 393 provide special order handling procedures designed to facilitate the execution of large blocks of stock which cannot be absorbed or supplied in the regular auction market within a reasonable time and at a reasonable price or prices.

[13] The same concept also is contained in rule 79, which states that all bids and offers which are made and accepted in accordance with rules 45 to 85 shall be binding. Accordingly, the rule change would delete rule 79 and consolidate it with this rule in order to clarify and simplify Exchange rules.

[14] For example, assuming that the market for a stock is 20 bid for 500 shares, with 500 shares offered at 20 and one-quarter. A member making a bid of 20 and one-quarter for 200 shares would be effecting a trade at that price for 200 shares.

to the traditional auction market principle, currently codified in rule 70, that only the highest bid and lowest offer shall have standing as recognized quotations. The Commission agrees with the Exchange that the revisions should operate to prevent the potential for "locked markets" that otherwise may occur in the absence of an explicit provision mandating automatic executions when bids and offers are crossed.

3. Rule 75: Disputes as to Bids and Offers

Rule 75 currently provides that disputes regarding bids or offers should be settled by the parties to the dispute, or if practicable by a vote of other members with knowledge of the transaction, or, if not settled by these means, then such disputes shall be settled by a Floor Official. This rule currently contains a presumption that disputes regarding the amount traded shall be settled by a Floor Official in favor of the smaller amount, with due allowance for the Floor Official to consider whether the member claiming the smaller amount actually had an order or orders totalling a larger amount.

The proposed rule change amends rule 75 to clarify that disputes as to bids and offers are to be settled by a Floor Official, if not settled by the parties to the dispute, and to clarify that disputes should not necessarily be settled in favor of the smaller amount. The rule also would be revised to provide that in settling a dispute, a Floor Official would rely primarily on the statements of any member who was not a party to the transaction, but would also take into account the size of the orders held by the parties to the disputed transaction, as well as such other facts as he deems relevant.

The Commission believes that the proposal to delete the current presumption in favor of the smaller sized bid or offer should provide for a more efficient resolution of trade disputes by removing an unnecessary presumption that may actually operate as an impediment to resolution of trade disputes. The Commission also believes that the amendment appropriately increases the level of oversight brought to the resolution of trade disputes by removing the membership voting procedure and replacing it with specified factors for Floor Official consideration.

4. Rule 76: "Crossing" Orders

Rule 76 provides that when a member is holding both a buy and a sell order in the same security, he must publicly bid and offer on behalf of both orders before he may cross the orders against each other to effect a trade. The purpose of this rule is to ensure that all orders are exposed to the trading Crowd, in order that members in the Crowd may have the opportunity to provide a better price to one side or the other of the proposed cross transaction. The Exchange believes that the principle of this rule is fundamental to the auction market and has reinforced it by clarifying that bids and offers must be clearly articulated in the trading Crowd before stock is crossed.

The Commission agrees with the Exchange that it is appropriate to require cross transactions to be clearly articulated prior to their execution so that orders represented in the trading Crowd are afforded sufficient opportunity to participate in the proposed cross transaction at prices better to one or both sides of the proposed trade. The Commission believes that the proposed amendment to rule 76 will operate to enhance order exposure and interaction in the Exchange's auction market, as well as increase pricing efficiency and opportunities for best execution of customer orders.

5. Rule 79A.10: Request to Make Better Bid or Offer

Rule 79A.10 currently requires that a floor broker, who is requested by his principal to bid or offer at the limit price of an order when that price is better than the current quotation, must do so or return the order. The proposed amendment would extend the coverage of the rule's bid/offer procedures to all members, including specialists, and would clarify that a member must bid or offer on behalf of an order when requested to do so. The provision that a member may return an order if he refuses, upon request, to make a bid or offer is proposed to be deleted. Accordingly, the proposed rule change would require any member when requested by his principal to bid or offer at the limit price of an order when that price is better than the current quotation to do so without discretion.

The Commission believes that the expansion of the rule's order handling procedures to include all Exchange members acting on behalf of a principal reflects appropriately the important agency function performed by specialists in handling limit orders on their books. The Commission further believes that the rule's expanded coverage over specialists should enhance the price discovery and execution mechanisms of the Exchange's auction market by increasing the opportunities for brokered limit orders to be executed between the current quotation. To the extent that more limit orders are executed between the current bid-ask spread, the amendment should enhance order interaction, market depth and liquidity and pricing efficiences, as well as benefit execution of public orders and promote competition among exchanges and other competing market centers.

D. Trading/Order Handling Rules Applicable to All Members Generally

1. Rule 13: Definition of Orders

The proposed rule change would clarify the Rule 13 definitions of an "at-the-opening-only" order and a "not held" order: [15] Additionally, the proposed rule change adds new rule 13.10 that would clarify that a specialist must accept all types of orders, except "not held" orders, unless Floor Official approval is obtained to decline to accept a particular type of order. If such approval were obtained, the specialist would be required to obtain cancellations of all other orders of that type that he had previously accepted. The Exchange believes that this clarification would help ensure that specialists fulfill their obligation to execute effectively all orders entrusted to them. The Exchange states that the requirement that a specialist must return all other orders of the same type previously accepted is intended to ensure that such orders do not disrupt the market and that they do not receive more favorable treatment than the subsequent orders of that type that are being returned.

Furthermore, the proposed rule change adds new rule 13.20, which is designed to clarify that, unless otherwise specified in the Rule, all members shall exercise "reasonable diligence" in the handling of any order entrusted them. The Exchange intends to reinforce the obligation of all members to handle each order entrusted to them according to the reasonable diligence standard. The Exchange recognizes, however, the difficulties members often encounter when handling a "switch order-

[15] A "not held" order is defined under NYSE rule 13 as "a market or limited price order marked 'not held,' 'disregard tape,' 'take time,' or which bears any such qualifying notation." More generally, the instruction "not held" indicates that the customer has given the floor broker time and price discretion in executing the best possible trade but will not hold the broker responsible if the best deal is not obtained. Because sections 11 (a) and (b) of the Act, 15 U.S.C. 78k (a) and (b), and the rules adopted thereunder, generally restrict the exercise of investment discretion over agency orders by specialists, a specialist may not accept a not held order.

contingent order," which involves the simultaneous execution of orders in different securities at a stipulated price difference. Accordingly, the definition of a "switch order-contingent order" in rule 13 has been revised to provide that a member executing such an order may handle the order on a "best efforts" basis.

The Commission agrees with the Exchange that the clarifications to the definition of "at-the-opening-only" orders should help remove any misconceptions about when such orders are eligible for execution. Accordingly, the proposed rule change clarifies that while an "at-the-opening-only" order is eligible to be executed only on an opening trade, such an order is not cancelled if the stock opens with a quotation rather than a trade.

The Commission also agrees with the Exchange that "buy or sell on print" orders are appropriately classified as "not held" orders because brokers cannot guarantee execution at the designated "print" price. Classifying such orders as "not held" orders should serve to put customers on notice that they bear the price risk of an execution at a price other than the "print" price.

Similarly, the Commission believes that new rule 13.10 is an appropriate codification of the obligation of specialists to accept all types of orders, except "not held" orders, unless Floor Official approval is obtained to decline to accept a particular type of order. The Commission also believes that the requirement that the specialist obtain cancellations of all other orders [16] of a type that he had previously accepted if such approval were obtained, provides an equitable method for treating such orders and allows the specialist to maintain fair and orderly markets and attempt to keep his stock open for trading in violatile markets when the alternative of triggering large numbers of, for example, "stop" orders, could have a potentially "cascading" effect, especially in rapidly reclining markets. The additional requirement that a specialist notify all brokers who had previously entered "similarly defined" orders that their orders are no longer in effect and obtain cancellations ensures that market participants are aware that their orders may be cancelled, while preserving their access to the market through the alternative of limit orders placed on the specialist's book.

[16] The Exchange states that the rule's coverage is limited to stop orders, stop limit orders, and percentage orders as defined in rule 13. Accordingly, specialists will not be able to utilize new rule 13.10 to obtain relief from their continuing obligation to excute market and marketable limit orders.

The Commission believes that the proposed rule change's addition of new rule 13.20, which clarifies that, unless otherwise specified in the Rule, all members must exercise "reasonable diligence" in the handling of any order entrusted them is consistent with the fiduciary duties to which members are held when handling orders on an agency basis, including the duty to achieve a best execution for customer orders.[17] In addition, the Commission agrees with the Exchange that because of the difficulties members may encounter when handling a "switch order-contingent order," which involves the simultaneous execution of orders in different securities at a stipulated price difference, such orders are appropriately identified as orders that deserve to be handled on a "best efforts" basis.

2. Rule 60: Firm Quote Rule

The proposed rule change deletes the Exchange's existing Rule 60 in its entirety and replaces it with a new rule.[18] The proposal makes a number of wholesale changes to the rule, including reducing from four to two the number of quotation needs.

Among these is the proposal that, when quotes are disseminated and are firm, the specialist shall be deemed to be the responsible broker-dealer with respect to any bid or offer made available by the Exchange to quotation vendors. The Exchange believes that this amendment is appropriate because the specialist stands at the center of the auction market, and is therefore in the best position to be responsible for any quotation disseminated from the Floor. The Exchange states that the specialist's designation as the Exchange's responsible broker-dealer for NYSE-disseminated quotations would not relieve a member who had made the bid or offer being disseminated from the risk of any transaction effected upon such bid or offer.

The Exchange also is proposing to reduce the time period during which a quotation can be in the non-firm mode from 60 minutes to 30 minutes. Continuation of the non-firm mode for longer than 30 minutes would require a confirmation by the Floor Governor (or two Floor Officials, if a Floor Governor is not available) who made the initial determination that a non-firm mode was appropriate. The Exchange believes that the reduction of the time period during which a quotation may be non-firm is appropriate in order to help ensure that "firm" quotations can again be disseminated in as reasonable time as market conditions will allow.

The proposed rule change also makes other related changes to the Exchange's "firm quote rule." For example, the Exchange is proposing to amend rule 60 to codify policies regarding the specialist's responsibility to honor erroneous quotations that have been displayed for six minutes or more, subject to several exceptions as specified in the rule.

The Commission agrees with the Exchange that a reduced number of modes will be less confusing to market participants, while still accurately reflecting the condition of NYSE quotations. The Commission also agrees with the Exchange that the related reduction in the time period during which a quotation can be in the non-firm mode provides a more reasonable time period to ensure that "firm" quotations can again be disseminated as market conditions permit. The Commission believes these changes should more accurately reflect buying and selling interest on the Exchange, thereby improving market information. Accordingly, the Commission finds that the reduced number of modes and the reduced time period during which a quotation is in the non-firm mode are consistent with rule 11Ac1–1(b)(3) under the Act.[19]

The Commission further agrees with the Exchange that new Rule 60's requirement that the specialist be the responsible broker-dealer with respect to any bid or offer made available by the Exchange to quotation vendors appropriately designates the specialist as the responsible broker or dealer for reporting purposes for securities in which he is registered. Because the Exchange is continuing to hold the relevant member at risk for his or her

[17] For a description of a brokerage firm's best execution obligation, see SEC, Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, 98 n.233 (February 3, 1977), as reprinted in Senate Comm. on Banking, Housing & Urb. Affrs., 95th Cong., 1st Sess., Report on Bank Securities Activities of the SEC 145, 251–52, 252 n.233 (Comm. Print 1977). See also SEC Advisory Committee on the Implementation of a Central Market System, Summary Report 13–14 (July 17, 1975); SEC, Status Report on the Development of National Market System, Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 [citing Restatement (Second) of Agency section 424 (1957)].

[18] Rule 60 is the Exchange's codification of the Commission's "firm quote rule," rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1, which requires national securities exchanges and associations to establish procedures for collecting from their members bids, offers and quotation sizes with respect to reported securities, and for making such bids, offers and sizes available to quotation vendors. Rule 60 was adopted in 1978. See Securities Exchange Act Release No. 14931 (July 5, 1978), 43 FR 29872 (order approving File No. SR–NYSE–78–27).

[19] 17 CFR 240.11Ac1–1(b)(3) (1990).

disseminated quotations, the Commission finds rule 60's amended reporting obligations consistent with rule 11Ac1–1(b) (1) and (2) under the Act, [20] which establishes the general firm quote obligation. Additionally, the Commission finds that the Exchange's proposal to codify its policies regarding the specialist's responsibility to honor erroneous quotations that have been displayed for six minutes or more, subject to the rule's enumerated exceptions, is likewise consistent with the limited exceptions to rule 11Ac1–1(c)(3) under the Act [21] governing erroneous quotations.[22]

3. Rule 91: Taking or Supplying Securities Named in Order

Rule 91, reflecting a fundamental principle of agency law, provides that, except under specified conditions, a member cannot trade as principal with a customer's order. Rule 91.40 currently provides a procedure whereby a member organization may reject a trade with respect to an order that had been entered into the Exchange's DOT system and executed by the specialist if the specialist has an interest in the account. The proposed amendment to rule 91.40 would simply extend the rule's agency law principles to any NYSE electronic order routing system.

Because the rule currently applies only to orders routed through the Exchange's DOT system, the Commission believes it is important to extend rule 91's agency law principles to cover any NYSE electronic order routing system. The Commission finds that extending the rule's customer protections to all systematized orders will ensure that customers are not denied the benefits of this basic agency law principle because of its limitation to any one order processing system.

4. Rule 95: Discretionary Transactions; Rule 120: Discretion to Employees—Forbidden; Rule 123A: Miscellaneous Order Requirements

The Exchange is proposing three additional technical changes to the trading and order handling rules generally applicable to all members. First, the Exchange is proposing to delete rule 95's exceptions applicable to certain discretionary accounts, as well as make certain "housekeeping" changes to the rule. Rule 95 is intended to prevent members from exercising discretion over customer orders while on the trading Floor as to stock, price, volume or whether to buy or sell. Rule 95(b) currently contains two exceptions for other than joint accounts: If the discretionary transaction is executed by a member for a bona fide cash investment account, or for the account of any person who is unable to effect transactions for his own account due to illness, absence or similar circumstances. The Exchange believes that such exceptions are not appropriate in today's markets and is proposing to delete these two exceptions. Rule 95.10, which requires the reporting of any discretionary transaction effected pursuant to either of these two exceptions, would also be deleted. The Commission believes that deletion of the rule 95(b) exceptions serve to strengthen the rule by further limiting the authority of members to execute discretionary orders. The Commission also believes that the deletion of rule 95.10, as well as the change to rule 95.20, are appropriate "housekeeping" amendments that will cleanup the rule after the deletion of the two exceptions noted above.

Second, the Exchange is proposing to eliminate Rule 120 as unnecessary. Because Exchange Rule 54 contains the prohibition contained in rule 120, the Commission agrees with the Exchange that rule 120 is unnecessary.

Third, the Exchange is proposing certain technical changes that would update and streamline rule 123A's miscellaneous order handling provisions. The following proposed changes are largely of a "housekeeping" nature and would simply update and streamline the rule: (1) The odd-lot order routing provisions of rule 123A.22 would be revised to reflect the 9:30 a.m. opening of trading and to provide flexibility to the rule; (2) rule 123A.46, which details the procedures for executing orders in a group received by a specalist via the SuperDOT System, would be deleted and replaced by principles to be incorporated in new rule 123B, which is discussed below; (3) rule 123A.47, which pertains to the so-called "half point error guarantee," would be transposed to new rule 123B; (4) rules 123A .50 and .55, which are concerned with the confirmation of "good-till-cancelled" ("GTC") orders, would be deleted; (5) the order transmission and reporting provisions of rule 123A.60 would be deleted; and (6) rules 123A .75 and .80 would be combined into new section .75, which would authorize a broader format for orders and cancellations that would provide flexibility for further systems enhancements. The Commission likewise agrees with the Exchange that the proposed changes will update and streamline rule 123A. The Commission does not believe that any of the proposed changes should detract from the quality of the Exchange's auction markets.

5. Rule 128A: Publication of Transactions; Rule 128B: Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions

The Exchange is proposing two changes to the rules governing the publication and correction of transactions. First, the Exchange is replacing rule 128A's current requirement that a seller most notify an Exchange "reporter" of a transaction with a modified requirement that a seller must report a sale "in such manner as to facilitate the printing of the trade on the Tape." The Commission agrees with the Exchange that the rule's modification is necessary to accommodate electronic books and other possible technology advances.

Second, the amendment to rule 128B.10 would require agreement of both the buyer and seller and Floor Official approval prior to publishing corrections on the Tape.[23] Rule 128B.12 also would be modified slightly to reflect that errors may arise from problems with systems, as well as mechanical and clerical problems. The Commission believes that the amended trade error procedures will bring an increased level of oversight to the correction of trade errors for publication on the Tape—regardless of the source of the problem.

E. Trading Rules Applicable to Specialists

1. Rule 94: Specialists' or Odd-Lot Dealers' Interest in Joint Accounts; Rule 104.16: Associate Specialists; Rule 104A.40: Short Sales; Rule 104A .50: LIFO Transactions

The Exchange also has proposed technical changes to several of its rules that govern specialist trading. For example, the Exchange is proposing to delete rule 104.16, regarding associate specialist, because such a category of membership no longer exists. An another example, the Exchange is proposing to eliminate rule 104A.40's cross-reference to rule 10a–1 under the Act [24] as unnecessary. The Commission

[20] 17 CFR 240.11Ac1–1(b) (1) and (2) (1990).

[21] 17 CFR 240.11Ac1–1(b)(3) (1990).

[22] The Commission intends to continue to discuss with the NYSE, however, whether six minutes, or some shorter period, is an appropriate standard.

[23] In a related change, the Exchange is proposing to delete rule 128B.11 in its entirety. A memorandum will be prepared by the Exchange indicating the exact procedures to be followed in reporting a change to the Tape. Such procedures may need to be filed with the Commission under section 19(b) of the Act.

[24] 17 CFR 240.10a–1 (1990).

agrees with the Exchange that these technical, non-substantive changes streamline the Exchange's rules and are consistent with the Exchange's charge of maintaining the integrity of its market.

2. Rule 104.17: Temporary Specialists

Rule 104.17 provides for the appointment of temporary specialists by a Floor Offical in the event of an emergency. The amendment to rule 104.17 would require Floor Governor approval, rather than Floor Official approval, to authorize the appointment of a temporary specialist. Because the appointment of temporary specialists is not a routine occurrence, the Commission believes that the proposed amendment to rule 104.17 brings an appropriate level of heightened oversight to such appointments.

3. Rule 115: Disclosure of Specialists' Orders Prohibited

As a general matter, rule 115 prohibits the disclosure of information by a specialist in regard to the orders on his book, except in certain limited circumstances. The Exchange is proposing to modify rule 115 to provide that a specialist may provide information about buying or selling interest in the market at or near the prevailing quotation in response to a market "probe" by a member acting in the normal course of business on the Floor, as well as to any other member who inquires, but may not disclose the identity of any buyer or seller unless expressly authorized to do so. At the same time, specialists would be prohibited from initiating the disclosure of such information, and thus could not favor certain Exchange members over others. In all other respects, the specialist would be required to maintain the confidentiality of the book. Accordingly, because the modification to rule 115 would permit the specialist to provide such information to all members of the Exchange, the Commission finds that the proposed amendment to rule 115 is consistent with section 11(b) of the Act [25] because it provides a mechanism for the fair and impartial disclosure of information by the specialist in a manner that is neither anti-competitive nor discriminatory.

F. Member Proprietary and On-Floor Trading

1. Rule 97: Limitation on Members' Trading Because of Block Positioning

Rule 97 is an anti-manipulative rule designed to limit member firms' trading for their own accounts for the remainder of a trading day during which they have positioned a block of stock. These limitations currently apply to a block transaction worth $200,000 or more. The Exchange is proposing to amend the rule's definition of "block" to provide that a block shall be a quantity of stock having a market value of $500,000 or more. The Exchange believes that the proposed revised market value is more relevant to block positioning/customer facilitation activity in today's markets.

The Commission notes that the current definition of a block was adopted in 1972, when the overall volume and size of block transactions were considerably smaller than they are today. The Commission agrees with the Exchange that the rule's higher dollar threshold is more relevant in today's markets, and that the current level is unnecessarily restrictive in this context.[26]

2. Rule 112.10: Orders Initiated "Off the Floor"

Rule 112.10(a) requires that proprietary orders of a member organization or any member, allied member, or approved person in such organization or officer or employee thereof must be sent to the Floor through a clearing firm's order room or other facilities regularly used for transmission of public customers' orders to the Floor. Rule 112.10(b) provides that after one of the persons specified in rule 112.10(a) learns about a trade of 5,000 shares or more, no off-Floor order for the account of a person specified in rule 112.10(a) may be sent to the Floor for two minutes following the print of the trade on the Tape. Rule 112.10(b) also contains a number of exceptions to the requirements of both rules 112.10(a) and 112.10(b).

The Exchange is proposing to amend rule 112.10(b) to eliminate the prohibition noted above against sending an off-Floor order to the Floor for two minutes following a print of 5,000 shares or more on the Tape. In the Exchange's view, the regulatory concerns that rule 112.10(b) purports to address are more properly addressed in today's markets by the Exchange's front-running policies, which reflect a consensus among the self-regulatory organizations regarding trading to take advantage of material non-public information regarding impending market transactions. A specific reference to the front-running policies is proposed to be added to rule 112.20, which is discussed below.

The Commission notes that this provision in rule 112.10(b) was adopted prior to the adoption of the Exchange's policies prohibiting "front-running" in specified contexts.[27] The Commission believes that the Exchange's front-running policies are the proper mechanism to address concerns regarding member trading to take advantage of material non-public information regarding impending market transactions. Accordingly, the Commission finds that the amendment to rule 112.10(b) (and member reliance on the Exchange's existing front-running policies) promotes conduct consistent with just and equitable principles of trade, and will not in any way detract from the Exchange's ability to detect and prosecute front-running violations or otherwise fraudulent or manipulative conduct.

3. Rule 112.20: "on the Floor" and "Off the Floor"

NYSE rule 112.20 establishes certain order routing prohibitions, and, as a general matter, rule 112.20(a) defines "on Floor" as meaning the trading Floor and specified adjacent premises. Rule 112.20(b) currently provides that certain transactions shall be deemed to be "on Floor" transactions, and therefore subject to the restrictions imposed on Competitive Traders. The transactions specified in rule 112.20(b) principally relate to entry of orders off the Floor following a conversation with a member on the Floor. Rule 112.20(b) also specifies that a transaction initiated off the Floor by a Competitive Trader who had been on the Floor earlier that day will be deemed to be an on-Floor order.

[25] Section 11(b) of the Act provides in pertinent part: "It shall be unlawful for a specialist or an official of an exchange to disclose information in regard to orders placed with such specialist 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: Provided, however, that the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropirate in the public interest or for the protection of investors." 15 U.S.C. 78k(b) (1988).

[26] The NYSE reports that the average size of a block traded on the Exchange in the first quarter of 1990 was 23,600 shares. The average share traded on the NYSE was valued at $35.24 during the same time period. This translates into an average dollar value of $831,664 per block trade. The Commission believes that rule 97's amended $500,000 threshold will more than adequately capture the block trades within the rule's proscriptions without unnecessarily burdening the cutomer facilitation market.

[27] See Securities Exchange Act Release No. 25233 (December 30, 1987) 53 FR 296 (immediate effectiveness of File No. SR-NYSE-87-36), and Securities Exchange Act Release No. 27047 (July 19, 1989), 54 FR 31131 (order approving File No. SR-NYSE-88-34).

The Exchange is proposing to amend rule 112.20's definitions and order routing prohibitions by rescinding current rule 112.20(b), and replacing it with new rules 112.20 (b), (c), and (d). The Exchange believes that the critical determination as to whether an order is to be deemed "on Floor" or "off Floor" is whether an order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order is maintained. In the Exchange's view, an order that is so transmitted should be deemed to be an off-Floor order, even if that order is entered following a conversation with a member on the Floor. New rule 112.20(b) provides that a member on the Floor will be deemed to be initiating an off-Floor order if the order is transmitted from the Floor and routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before the order is re-transmitted to the Floor.[28] Proposed rule 112.10(b) also would transpose from current rule 112.20(a) the principle that an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it.

The Exchange believes that proposed rule 112.20(b) provides a practical means for a member on the Floor to enter an order for his own account without having to physically leave the Floor to do so, which is presently the case. The Exchange does not believe it would be appropriate for an order entered pursuant to proposed rule 112.20(b) to be deemed an "on Floor" order because the member initiating the order is not seizing an immediate trading opportunity available to him by virtue of his presence on the Floor, but rather must arrange for the order to be routed through a clearing firm's order room and then re-transmitted to another member on the Floor for execution. The Exchange believes, therefore, that such an order should be most appropriately viewed as an off-Floor order.

New rule 112.20(c) provides that any order entered by a member organization following a conversation with a member on the Floor for any account in which it, or any member, allied member, or approved person in such organization or officer or employee thereof, is directly or indirectly interested, or for any discretionary account serviced by the member organization, would be deemed to be an off-Floor order, provided the order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order would be maintained. The order also would be deemed to be an off-Floor order if an exception from the order room transmission requirement is available under rule 112.10(b). The Exchange exects that proposed new rule 112.20(c) will facilitate routine market "probe" conversations between a member on the Floor and an "upstairs" organization, but will not result in increasing a member organization's trading advantages over non-members.

Finally, new rule 112.20(d) states that members shall not trade in contravention of any Exchange policy against the frontrunning of block transactions.[29]

The Commission finds that the amendments to rule 112.20 (b) and (c) are consistent with the Act in that they reflect more accurately the status of on and off-floor orders. The Commission agrees with the NYSE that, in today's market environment of rapid dissemination of market information, it makes little sense to force a member to walk off the floor to route an order "upstairs" so it can be considered an off-floor to route an order "upstairs" so it can be considered an off-floor order. Indeed, under current NYSE rules, a non-member customer can have direct telephone access to a member's floor booth. The proposed NYSE requirement—that of routing an on-floor order upstairs and then back down to the floor—will continue to prevent any undue advantage of floor immediacy from accruing to orders designated as off-floor.[30]

Finally, the Commission also believes that the amendment to NYSE rule 112.20(d) promotes conduct consistent with just and equitable principles of trade by explicitly incorporating the frontrunning policy into rules governing competitive trader conduct.

G. Exchange Automated Order Routing Systems Rule—Rule 123B

The Exchange is proposing to adopt new rule 123B to codify all the policies and procedures applicable to Exchange trading systems under one umbrella rule. The majority of these policies and procedures are already in place and have been separately filed with the Commission over the years as policies of the Exchange.

First, new rule 123B(a) describes the general features of the Exchange's SuperDOT System, and generally authorizes the Exchange to establish the size and types of orders eligible for transmission through SuperDOT.[31] Second, subject to order size parameters established by the Exchange, NYSE rule 123B(b) establishes the Exchange's policies governing eight separate aspects of systematized orders on the Exchange.[32] Third, rule 123B(c) authorizes the Exchange to establish reporting and comparison procedures utilizing universal contra designations

Fourth, rule 123B(d) would provide that a specialist is required to execute all orders he receives by means of Exchange automated order routing systems in accordance with NYSE auction market procedures, unless the Rule itself specifies other procedures, unless the Rule itself specifies other procedures. Rule 123B(d) also would make clear that the specialist must expose systematized orders to the trading Crowd, and must follow Exchange "crossing" procedures before buying or selling stock for his own account. Additionally, rule 123B(d) makes clear that all systematized orders, regardless of size, that are routed to a specialist are "held" orders, and that a specialist may be deemed to have "missed the market" if any such order is not executed against prevailing contra side interest in the market at the time he receives the order.

In the Exchange's view, the commitment to traditional auction market principles stated in proposed

[28] Under the proposed rule change, however, an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it. NYSE rule 112.20(b).

[29] See supra note 25 and accompanying text.

[30] The interpretation of "off the floor" contained in the amendments to rule 112.20 only applies to rule 112 and does not govern or control the meaning of "off the floor" for purposes of Exchange Act rule 11a2-2(T) (the "effect versus execute" rule).

[31] New rule 123B(a) also establishes the Exchange's authority to modify the operational aspects of SuperDOT. The Commission notes that in its exercise of this authority, the Exchange must comply with section 19 of the Act, 15 U.S.C. 78s.

[32] More specifically, rule 123B(b)(1) codifies the Exchange's commission policy with respect to specialist floor brokerage functions. Rule 123B(b)(2) merely incorporates the existing "half point error guarantee" provisions of current rule 123A.47. Rule 123B(b)(3) governs specialist responsibilities with respect to the reporting of stopped stock. Rule 123B(b)(4) regulates member booth support systems located on the Floor of the Exchange. Rule 123B(b)(5) publishes the standards governing when the Exchange's Individual Investor Express Delivery Service ("IIED Service") will be activated, as well as eligibility for this service. Rule 123B(b)(6) governs specialist responsibilities with respect to request status reporting. Rules 123B(b)(7) establishes a requirement for the immediate reporting of eligible market orders where the Exchange displays the best quotation of the Intermarket Trading System and where the quotation is the minimum variation of trading. Finally, rule 123B(b)(8) publishes the Exchange's so-called "active stock feature" order handling procedures for systematized orders.

rule 123B(d) reflects a more appropriate means than those currently specified in rule 123A.46 for the pricing of orders received by the specialist in a group, as well as for the pricing of all systematized orders generally. The Exchange believes that the pricing procedures stated in current rule 123A.46 are somewhat arbitrary and cumbersome in practical application, and that auction market order exposure will likely result in executions at prices that accurately reflect prevailing market conditions when orders, including orders in a group, are received by the specialist.

Finally, new rule 123B(e) would codify an Exchange policy, rooted in article II, section 6 of the Exchange's Constitution, that the Exchange shall not be liable for any loss sustained by a member or member organization resulting from the use of an NYSE automated order routing system. Rule 123B(e) also would codify a general principle that any loss sustained by an entering member organization pertaining to an order, that does not appear on the SuperDOT system's "Merged Order and Report Log" will be absorbed by that member organization. If an order does appear on the "Merged Order and Report Log" and was designated for a particular specialists's post, any loss pertaining to that order will be absorbed by the specialist. The Exchange believes that proposed rule 123B(e) provides appropriate guidance to members and member organizations as to apportionment of any losses that may be sustained as to orders entered into the NYSE's automated order routing systems.

Given the increasing proliferation of automated order processing systems at the Exchange, the Commission believes it is proper for the Exchange to articulate in published standards the fundamental operational aspects of these systems, especially in the area of order executions. Moreover, the Commission finds it beneficial that the Exchange clarify specialist responsibilities with respect to handling orders via automated systems. In addition, the Commission believes it important to the quality of customer executions for the Exchange's automated order processing systems to preserve the opportunity for obtaining a superior execution at a price between displayed quotations. The Commission believes the Exchange's rule accomplishes this, and, accordingly, the Commission finds that adoption of the Exchange's "umbrella" automated order processing rule is consistent with brokers' fiduciary duties to obtain a best execution for customer orders and the protection of investors and the maintenance of fair and orderly markets on national securities exchanges.

Additionally, the Commission finds that the procedures contained in rule 123B (b) and (c), which clarify member responsibilities in the areas of specialist commissions, errors in trade reporting, the reporting of transactions in "stopped" stock, member booth support systems located on the Floor of the Exchange, operation of the Exchange's IIED Service, request status reporting, and other reporting and order handling features of Exchange automated order processing systems, should enable the Exchange to operate these systems more efficiently. Accordingly, the Commission finds the adoption of rules 123B (b) and (c) are consistent with section 11A of the Act,[33] because they encourage the use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions.

Furthermore, the Commission notes that the Exchange's liability disclaimer for member losses resulting from the use of an NYSE automated order routing system, and its related policy governing the apportionment of losses among members and member organizations for member losses sustained for orders entered into NYSE's automated order processing systems, are both limited in their scope to losses sustained by members and member organizations. Accordingly, because these rules do not extend to customer related losses, the Commission finds the liability disclaimer and loss apportionment provisions of new rule 123B(e) are consistent with sections 6(b)(5) and 11A of the Act,[34] because these liability rules generally protect investors and the public interest and encourage the use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions.

H. Specialist Booth Wire Policy

Current NYSE rules permit a specialist unit to have a telephone line installed at its stock trading post to permit it to communicate with its off-floor office or clearing firm (a "post wire"). The post wire may not be used, however, to transmit orders to the floor for the purchase or sale of securities.[35] Current NYSE rules also permit a member or a member organization to maintain a telephone line at its floor booth location to permit it to communicate from the Exchange floor with non-member customers located off the floor (a "booth wire").[36] The Exchange, however, has never adopted a formal policy with respect to specialists' use of booth wires maintained by members or member organizations.

The Exchange is proposing to adopt such a policy, which will provide standards governing the use of specialists of booth wires located on the trading floor. Specialists would be allowed to use a booth wire in the following two situations. First, under the proposed specialist booth wire policy, a specialist member organization would be authorized to have its own booth wire only if it does a public business in a non-speciality stock, in which case a booth wire could be used for such business. Second, a specialist unit that does not have public customers would not be permitted to have its own booth wire, but would be permitted to use a booth wire assigned to a member organization in order to communicate with that member organization's upstairs trading desk.

The specialist booth wire policy states specifically the conditions under which a specialist may communicate by means of his or her own booth wire or a booth wire assigned to another member or member organization.[37] A specialist would not be permitted to accept a specialty stock order, or a modification to an order already in his or her possession, over his or her own booth wire or the booth wire of another member. Further, a specialist would not be permitted to initiate a booth wire conversation with a particular member organization if he or she does not have an order in his or her possession from that organization. A specialist may initiate booth wire communications, or respond to request for a conversation, with a particular member organization if he or she has an order in his or her possession from that organization; he or she may not initiate such a conversation, however, if he or she has ordered on the same side of the market from more than one member organization. A specialist would be permitted to engage in a conversation with an upstairs trading desk of another member organization over that

[33] 15 U.S.C. 78k–1 (1988)

[34] 15 U.S.C. 78f(b)5, 78k–1 (1988).

[35] See Securities Exchange Act Release No. 25852 (June 23, 1988), 53 FR 24539 (order approving File No. SR–NYSE–87–18) ("Release No. 25852"); NYSE rule 36.30.

[36] See Release No. 25852; NYSE rule 36.20.

[37] See letter from Brian McNamara, Managing Director, Market Surveillance, NYSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 31, 1991.

organization's booth wire only for the purpose of discussing general market conditions or known buying and selling interest in a particular stock or stocks. A specialist may not favor any member or member organization in engaging in both wire conversations, and must make himself or herself available to respond to requests for booth wire conversations as impartially as possible. A specialist who does not act impartially in responding to requests for booth wire communications will be deemed to be acting in contravention of just and equitable principles of trade.

The Exchange believes that the proposed policy strikes an appropriate balance between, on the one hand, the interest of "upstairs" employees of a member organization in occasionally discussing with a specialist general market conditions relating to an order they have left with him or her, and, on the other hand, concerns that specialists act in a fair and impartial manner at all times to all member organizations without favoring any particular member organization in discussing market conditions that may affect the execution of orders.

The Commission believes that approval of the NYSE's booth wire policy strikes an appropriate balance between the competing concerns of specialists discussing with employees of "upstairs" member organizations market conditions related to orders placed with specialists and the fair and impartial execution of such orders. The Commission believes that it is reasonable to permit specialist units to communicate from the Exchange Floor with the upstairs trading desks of member organizations. By allowing such communications links, the Exchange enables specialists to perform their important market making functions more effectively on the NYSE Floor. At the same time, the Commission believes that the NYSE's prohibition against the use of such communication links to transmit to the floor orders for the purchase or sale of their specialty stocks is reasonable in view of the crucial role specialists have in maintaining the stability of the market. In this connection, the Commission believes that the NYSE's general prohibition against specialists initiating conversations with upstairs members and the related requirement that specialists act fairly and impartially in all communications carried over a booth wire ensures that specialist booth wire communications are not conducted inequitably. Accordingly, the Commission finds that the Exchange's specialist booth wire policy is consistent with sections 6(b)(5), 6(b)(8), and 11A(a)(1)(C)(ii),[38] which respectively require the rules of a national securities exchange to promote just and equitable principles of trade, to remove impediments to a free and open market, to protect investors and the public interest, to not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and to assure fair competition among brokers and dealers.

III. Conclusion

The Commission has reviewed carefully the Exchange's proposed rule change and concludes, for the above stated reasons, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the proposals developed by the Exchange's Market Regulation Review Committee balance appropriately the competing concerns of various Exchange constituencies in a manner consistent with just and equitable principles of trade. Given the significant role played by the NYSE as a primary market and the dynamic nature of competitive forces shaping the national market system, the Commission supports strongly the NYSE's important efforts to review the structure of market trading regulation in order to have an efficient and meaningful regulatory program in effect.

Accordingly, based upon the aforementioned factors, the Commission finds that the Exchange's proposed rule change relating to recommendations by its Market Regulation Review Committee is consistent with sections 6(b)(5), 6(b)(8), 11(b), and 11A(a)(1) of the Act [39] and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[40] that the proposed rule change (File No. SR–NYSE–89–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Dated: June 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–15062 Filed 6–24–91; 8:45 am]

BILLING CODE 8010–01–M

[38] 15 U.S.C. 78f(b)(5), 78f(b)(8), and 78k–1(a)(1)(C)(ii) (1988).

[39] 15 U.S.C. 78f(b)(5), 78f(b)(6), 78k(b), and 78k–1(a)(1) (1988).

[40] 15 U.S.C. 78s(b)(2) (1988).

[41] See 17 CFR 200.30–3(a)(12) (1990).

[File No. 1–9201]

Issuer Delisting; Application to Withdraw From Listing and Registration (Dense-Pac Microsystems, Inc., Common Stock, No Par Value)

June 19, 1991.

Dense-Pac Microsystems, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The company desires to voluntarily withdraw its Common Stock from listing on the BSE because there has been limited trading of its Common Stock on such Exchange and because the Company does not want to continue to incur the costs to maintain the listing. The Company's Common Stock is currently quoted by National Association of Securities Dealers Automated Quotations System ("NASDAQ") and is traded in the over-the-counter market.

Any interested person may, on or before July 11, 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 Exchange 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. 91–15011 Filed 6–24–91; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Expedited Review by the Office of Management and Budget.

AGENCY: Tennessee Valley Authority.

ACTION: Notice of request for expedited review by the Office of Management and Budget (OMB) of information collection.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591.

Expedited review by OMB has been requested as described below. Because of the time frame in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer, Mr. Ron Minsk, by telephone at (202) 395–3084 or by FAX at telephone (202) 395–7285.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402–2801; (615) 751–2523.

Type of Request: Regular submission.,

Title of Information Collection: Recreational Benefits of Navigation Locks.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 700.

Estimated Total Annual Burden Hours: 233.

Estimated Average Burden Hours Per Response: .33.

Need For and Use of Information: The Recreational Benefits of Navigation Locks survey will obtain information required for completion of a benefit/cost study to be used in evaluating the economic feasibility of constructing newer, larger locks at Watts Bar and Chickamauga Dams on the Tennessee River.

Additional Information: It is essential that information be obtained on recreational use of the current navigation locks at Watts Bar and Chickamauga Dams. The locks, which were designed and constructed in the 1930s and which are operated by the U.S. Army Corps of Engineers, are scheduled for maintenance and will be closed to commercial and recreational use for the period from July 15, 1991 through August 23, 1991.

Because this closure will affect traffic on the river for six (6) weeks of the summer, the season of the most intensive recreational use of the reservoirs, postponing the survey until the 1992 recreation season will increase the cost of the survey and will delay completion of the benefit/cost study. The benefit/cost study is currently scheduled for completion in the spring of 1992. By May 1992 the project is planned to be reviewed and evaluated to determine the feasibility of constructing new locks at Chickamauga and Watts Bar dams. Delaying the recreational benefits survey until 1992 will result in a delay of up to one (1) year in completing the benefit/cost study and the subsequent project review and evaluation.

Therefore, OMB has been requested to review and approve this information collection on an expedited basis. OMB approval has been requested by no later than July 5, 1991. We are also publishing with this notice a copy of the Standard Form 83 (Request for OMB Review), the supporting statement, and the proposed survey instrument.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

OMB SUPPORTING STATEMENT RECREATION ECONOMIC IMPACTS ASSOCIATED WITH NEW LOCKS AT WATTS BAR AND CHICKAMAUGA DAMS

Section A. Justification

A1. Circumstances that Make the Collection of Information Necessary

The provision of a system for navigation was a responsibility established for the Tennessee Valley Authority (TVA) by an Act of Congress in 1933 (16 U.S.C. 831j). In discharging that responsibility TVA has constructed a series of locks and dams encompassing approximately 650 miles of the Tennessee River and its tributaries. Newer, larger locks have been constructed in the lower part of the system and recently an effort has begun to evaluate the need for new locks in the upper part of the river system. In particular the locks at Watts Bar and Chickamauga Dams are being evaluated to determine the economic feasibility of constructing new locks. The current locks were designed and constructed in the 1930s.

As a part of evaluating the economic feasibility of new locks at Watts Bar and Chickamauga Dams, TVA is conducting a benefit/cost study according to procedures from the 1983 Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies published by the U.S. Water Resources Council. The document states that the preferred method of estimating recreation benefits is by contingent valuation or travel cost. The proposed questionnaire will provide us information to determine values using both methods and compare the results.

The locks, which are operated by the U.S. Army Corps of Engineers, are scheduled for maintenance and will be closed to commercial and recreational users for the period from July 15, 1991 through August 23, 1991. Because this closure will affect traffic on the river for six (6) weeks of the summer, the season of the most intensive recreational use of the reservoirs, postponing the survey until the 1992 recreation season will increase the cost of the survey and will delay completion of the benefit/cost study.

The benefit/cost study is currently scheduled for completion in the spring of 1992. By May 1992 the project is planned to be reviewed and evaluated to determine the feasibility of constructing new locks at Chickamauga and Watts Bar dams. Delaying the recreational benefits survey until 1992 will result in a delay of up to one (1) year in completing the benefit/cost study and the subsequent project review and evaluation. Because the locks will be closed to the public beginning July 15 sampling needs to start no later than mid June and continue through July 14.

A2. Use and Users of the Information

The specific objective of Watts Bar and Chickamauga locks survey is to determine the economic benefits attributable to the recreation users of the locks under current and future conditions in an effort to assign recreation benefits to the new lock system. This will allow TVA staff to accurately evaluate a portion of the benefits to the new locks and to gain knowledge on the importance of locks for recreation navigation.

Survey data will be collected through personal interview of one (1) person in each pleasure boat utilizing the lock at the survey site. Data will be computerized and analyzed during July through August and the final report is due November 30. Travel cost will be calculated using the Rocky Mountain Station Travel Cost Model developed by the U.S. Forest Service. The model includes correlation analysis of the most promising variables as well as tests for collinearity. The contingent valuation method is a mean net willingness to pay value and includes analysis of variance.

A3. Use of Information Technology To Reduce Burden

The responses will be recorded on the survey instrument by the interviewer.

This method imposes the least burden on the respondents.

A4. Efforts To Identify Duplication

The U.S. Army Corps of Engineers (USACE) from the Nashville District and the national Waterways Experiment Station were contacted to determine if this type of study had been conducted by USACE. To their knowledge, recreation benefits of locks have not been studied. This type of study has never been conducted on any of the TVA reservoirs.

A5. Why Similar Information Cannot Be Used

As described above, no similar information is available.

A6. Efforts to Minimize the Burden on Small Businesses

The respondents to this survey will be individuals using the waterway for recreational purposes.

A7. Consequences of Less Frequent Data Collection

This information collection is a one-time activity.

A8. Circumstances that Require Data Collection Procedures Inconsistent with 5 CFR 1320.6

This information collection will be conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

A9. Efforts to Consult with Persons Outside of TVA on the Data Collection

We spoke with Scott Jackson, Recreation Researcher, USACE Waterways Experiment Station, Vicksburg, Mississippi ((601) 634–2105), and Cliff Reinert, USACE Nashville District ((615) 736–5026) to determine if they had done studies of recreation benefits of locks.

A10. Assurances of Confidentiality

The responses to this survey are voluntary. Respondents will not be asked to provide their names during the course of the interview. Although the completed survey instruments will be used only by program personnel, disclosures of information may be made as required by law.

A11. Justification for Questions of a Sensitive Nature

There are no questions of a sensitive nature.

A12. Estimate of the Annual Cost of the Data Collection

The cost to collect, analyze, and report the data is $50,340 as estimated by 3D/Environmental Services, Inc. (3D/ESI), the company awarded the contract. It is estimated there is an additional cost to TVA of about $6,000 to write and publish the Request for Proposals and to coordinate with 3D/ESI. These costs include all applicable overheads and travel.

A13. Estimates of the Burden of Information Collection

The total estimated burden hours is 233 hours. This is based on surveying approximately 500 lock users and 200 nonlock users. It is estimated by 3D/ESI that the administration of the questionnaire will average 20 minutes per interview. This is based on previous experience using a questionnaire of similar length.

According to USACE records, the population of boating parties at both locks is about 7800 per year. The population of nonlock users is undefined but assumed to be larger that the population of lock users. Random exit surveys will be conducted at marinas in the surrounding area until 200 nonlock users are interviewed. The nonlock users will be asked questions from the same questionnaire as the lock users. However, this population is being sampled only to make general comparisons to the lock user population and not to make statistical inferences between the two populations.

A14. Changes in Burden

This is a new information collection and is a one-time activity. There is no change in the burden.

A15. Publication of Results for Statistical Use

There are no plans to publish the results of this information collection for statistical purposes.

Section B—Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.

Draft

Survey Instrument

Starting Time _____ _____
Interviewer _____ _____
Date _____ ____
Location _____ _____

Excuse me. I'm from _____, and I'm doing a study on the needs of boaters on the lakes of the Tennessee River. The T.V.A. wants to know how they can improve your boating experiences, and it's extremely important that we get your personal feelings about boating in this area.

Required Burden Estimate Statement (Pursuant to 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated to average 20 minutes per interview. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, please send them to the agency clearance officer, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402; and to the Office of Management and Budget, Paperwork Reduction Project (3316–____), Washington, DC 20503.

Can I take a few minutes of your time to ask you some questions? (If they refuse, respond appropriately—see handout. If they still refuse, be sure to record it on the refusal sheet.)

Thank you!

First, I want to tell you that any information I collect will be kept completely confidential. That means that we'll use the data as a group and won't be reporting anyone's quesionnaire by itself. There will be no way that anyone will be able to find out what you answered on the questionnaire.

1. How many people including yourself are on your boat today? ____ people.

2. What activities, for example skiing, fishing, or sightseeing, etc., are you participating in today?

_____

_____

3. Which of these activities is the most important? (Circle one above.)

4. At what Marina or ramp did you put your boat in the water?

_____

_____

5. How many miles did you drive to get from your home to that put in point? _____ miles

6. How long did the drive take you? _____ hours

7. Was coming to the river the main reason you took this trip away from home? ____ yes ____ no

8. Have you visited or are you going to visit any other lakes on this trip? ____ no ____ yes—which ones

_____

_____

9. How many days will you be away from home on this trip? _____ days

10. How much of this time will you spend boating? _____ days/hours (circle)

11. In the last 12 months, how many trips have you taken to this area to go boating? _____ trips

The next few questions concern the amount of money that will be your share of the total amount spent on this trip.

12. About how much will you personally spend on transportation for this trip? $_____

13. About how much will you personally spend on food for this trip? $_____

14. About how much will you personally spend on boat fuel and other recreation supplies, such as film, suntan lotion, or fishing tackle, etc., for this trip? $_____

15. About how much will you personally spend on overnight accommodations for this trip? $_____

Add 4 items above. ***$_____ *** total cost.

I now want to ask you some questions about the locks here on the Tennessee River.

16. Was the presence of this lock a positive factor, negative factor, or not a factor, in your

decision to come to this part of the Tennessee River?
____ not a factor
____ positive—in what way?

____ negative—in what way?

17. Has the presence of the lock affected the type of boat or other recreational equipment you've purchased?
____ no
____ yes—in what way?

18. How many times will you pass through a lock on this boating trip? (Can pass through same lock more than once.) ____ lockages
19. Have you been through these locks before?
____ no
____ yes—In the past, on average, how long have you been delayed each day waiting at the locks? ____ hours/minutes (circle)
20. How long do you think you'll have to wait today to get through all the locks? ____ hours/minutes (circle)

Next, I'd like to ask you some hypothetical questions about your trip and the effects of lock use on it. Assume the trip you are on now became more expensive. Perhaps due to increased travel costs or something, but lock conditions were unchanged. You said your share of the total cost of this trip was $_____ *** total cost from above ***

21. If it would have cost you $_____ (20% of cost) more, would you have come on this trip?
____ Protest—will not answer. Record why?

____ Yes (go to 21a.)
____ No—work between 0 and 20% to find the highest acceptable value. Split the difference in half until you reach the nearest $1 (less than $10) or the nearest $5 (greater than $10). $____

21a. If it would have cost you $____ (50% of cost) more, would you have come on this trip?
____ Yes (Go to 21b.)
____ No—work between 20 and 50% to find the highest acceptable value. Split the difference in half until you reach the nearest $1 (less than $10) or the nearest $5 (greater than $10). $____

21b. If it would have cost you $_____ (100% of cost) more, would you have come on this trip?
____ Yes (Go to 21c.)
____ No—work between 50 and 100% to find the highest acceptable value. Split the difference in half until you reach the nearest $1 (less than $10) or the nearest $5 (greater than $10). $_____

21c. Keep going until you receive a negative answer. Use 100% increments. Work between last 2 bids to find highest acceptable value. $_____
After last bid.

22. So adding this to your current trip expenses means that $_____ *** total cost + last bid *** is the highest amount that you personally would pay to come on this trip?
____ No—repeat bids for personal value
____ Yes

23. Now, suppose you had a schedule of locking times so that you could plan for, or avoid delays. How much, if any, more than *** total cost + last bid *** would you pay to come on this trip? $_____

24. Now suppose you knew you'd only have to wait ½ as long as you do now to go through the locks on this trip. How much, if any, more than *** total cost + last bid *** would you pay to come on this trip? $_____

25. Now suppose you could be guaranteed of never having to wait to enter the locks. How much, if any, more than *** total cost + last bid *** would you pay to come on this trip? $_____

26. Now suppose that you knew you would have to wait twice as long to enter the locks. How much, if any, less than *** total cost + last bid *** would you pay to come on this trip? $_____

Lastly, may I get some general information about you?

27. Observe gender. ____ male ____ female
28. What is your age? ____ years old
29. What town or city do you live in? (Prompt for complete information.)
City

County

State

Zip Code

30. Do you live inside or outside of town?
____ inside ____ outside
31. What do you do for a living?

32. Can you tell me how many years of school you completed? ____ years
33. Would you please give a ballpark figure of your annual family income before taxes? $_____

That's all the questions I have. Thank you very much for your participation.

Ending time _____
Type of boat
____ Runabout
____ Cabin cruiser
____ Houseboat
____ Bass boat
____ Pontoon boat
____ Sail boat

Comments

BILLING CODE 8120-08-M

Standard Form 83
(Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

Tennessee Valley Authority
Resource Group, Operations and Maintenance/Public Use Department
Recreation

2. Agency code: 3 3 1 6

3. Name of person who can best answer questions regarding this request

George M. Humphrey

Telephone number: (615) 632-1606

4. Title of information collection or rulemaking

Recreational Benefits of Navigation Locks

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

16 USC 831-831dd, or TVA Act of 1933

6. Affected public *(check all that apply)*

1 [X] Individuals or households
2 [ ] State or local governments
3 [ ] Farms
4 [ ] Businesses or other for-profit
5 [ ] Federal agencies or employees
6 [ ] Non-profit institutions
7 [ ] Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ — ___ ___ ___ ___, or, None assigned [ ]

8. Type of submission *(check one in each category)*

Classification	*Stage of development*	*Type of review requested*
1 [ ] Major	1 [ ] Proposed or draft	1 [ ] Standard
2 [ ] Nonmajor	2 [ ] Final or interim final, with prior proposal	2 [ ] Pending
	3 [ ] Final or interim final, without prior proposal	3 [ ] Emergency
		4 [ ] Statutory or judicial deadline

9. CFR section affected

_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? [ ] Yes [ ] No

11. If a major rule, is there a regulatory impact analysis attached? 1 [ ] Yes 2 [ ] No

If "No," did OMB waive the analysis? 3 [ ] Yes 4 [ ] No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART II.—Complete This Part Only If the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less "Recreation, inland waterways, water resources development" To determine the potential recreation benefits and economic impacts associated with new navigation locks in fulfillment of the criteria in Economic and Environmental Principles for Water and Related Land Resources Implementation Studies. This will be accomplished using both the contingency valuation and travel cost methods.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

17. Annual reporting or disclosure burden

1 Number of respondents	700
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	700
4 Hours per response	0.33
5 Total hours *(line 3 times line 4)*	233

18. Annual recordkeeping burden

1 Number of recordkeepers	NA
2 Annual hours per recordkeeper	NA
3 Total recordkeeping hours *(line 1 times line 2)*	NA
4 Recordkeeping retention period	NA years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	233
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	233
Explanation of difference	
4 Program change	233
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

21. Requested expiration date
September 15, 1991

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [X] Program evaluation
3 [ ] General purpose statistics
4 [ ] Regulatory or compliance
5 [X] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping
Reporting
2 [X] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [ ] Other *(describe)*. _____

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [ ] Yes [X] No

27. Regulatory authority for the information collection

_____ CFR _____ ; or _____ FR _____ ; or, Other *(specify)*: _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official	Date
Original signed by Robert A. Marker	5/28/91
Signature of agency head, the senior official or an authorized representative Mark R. Winter Mark R. Winter, Agency Clearance Officer	Date 6/6/91

[FR Doc. 91-14650 Filed 6-24-91; 8:45 am]
BILLING CODE 8120-08-C

GPO : 1984 O - 453-776

Environmental Assessment; Phosphate Development Works, AC

AGENCY: Tennessee Valley Authority.

ACTION: Environmental Assessment for demolition of Phosphate Development Works [PDW].

SUMMARY: The Tennessee Valley Authority (TVA) and the U.S. Army are proposing the demolition of the Phosphate Development Works (PDW) located on the TVA Reservation in Muscle Shoals, Alabama. The facility is currently owned by the Army, but the land will be returned to TVA. An Environmental Assessment (EA), in accordance with the National Environmental Policy Act, has been prepared.

DATES: TVA will consider all relevant comments received by July 25, 1991 before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul Schmierbach, Manager, Environmental Quality, Tennessee Valley Authority, 400 W. Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: For additional information on this action or for a copy of the EA, call Sam H. Calhoun, Manager of Environmental Services, Tennessee Valley Authority, (205) 386–2010 in Muscle Shoals, Alabama.

SUPPLEMENTARY INFORMATION: The PDW was authorized by the Secretary of the Army in 1950 to produce methyldichlorophosphineoxide (DC), an intermediate chemical used in the production of the nerve agent GB. In July 1951, limited production began and continued intermittently for several years. The PDW has been in layaway from 1963 until the present except that in 1987, several railcars of DC from the Rocky Mountain Arsenal in Colorado were purified in a small temporary purification plant onsite and shipped to another Army facility. The Army has no further plans for the PDW. The PDW consists of a 63-acre site with various-sized buildings and associated storage tanks and piping.

The present condition of the PDW facility is poor, with buildings and equipment in a deteriorated state. Considerable expense would be required to rehabilitate the plant to a useful condition.

TVA's and the Army's plan is to clean up the site, demolish and sell for salvage unneeded facilities, and return areas to grass, trees, and other vegetation so the site would be suitable for a variety of future uses. All asbestos will be removed in accordance with regulatory requirements and sent to a permitted landfill. Other solid wastes will be sent to a local landfill.

Dated: June 17, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91–15037 Filed 6–24–91; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–91–24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 5, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. 26587, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 20, 1991.

Annette Pitts,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26587.

Petitioner: World Jet Aircraft International.

Sections of the FAR Affected: Section 9309(b) of the Nonaddition Rule under the Airport Noise and Capacity Act of 1990.

Description of Relief Sought: To allow petitioner to transport a Boeing 707 from Israel to Shermon Clinton Airport, in Burnsflat, Oklahoma, with a maintenance stop in Ft. Lauderdale, FL, where the aircraft will be used in developing Stage 3 hushkits for Boeing 707.

[FR Doc. 91–15033 Filed 6–24–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 18, 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 Teasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0120.

Form Number: IRS Form 1099–G.

Type of Review: Extension.

Title: Certain Government Payments.

Description: Form 1099–G is used by governments (primarily State and local) to report to the IRS (and notify recipients of) certain payments (e.g.,

unemployment compensation and income tax refunds). We use the information to insure that the income is being properly reported by the recipients on their returns.

Respondents: State and local governments, Federal agencies or employees.

Estimated Number of Respondents: 4,717.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 8,769,877 hours.

OMB Number: 1545–0184.

Form Number: IRS Form 4797.

Type of Review: Revision.

Title: Sales of business property.

Description: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets, other than capital assets, and involuntary conversations of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.

Respondents: Individials or households, farms, businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,396,388.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping 30 hrs., 51 min.

Learning about the law or the form 11 hrs., 22 min.

Preparing the form 17 hrs., 2 min.

Copying, assembling, and sending the form to IRS 1 hr., 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 84,621,113 hours.

OMB Number: 1545–1081.

Form Number: IRS Form 8809.

Type of Review: Revision.

Title: Request for Extension of Time to File Information Returns.

Description: Form 8809 is used to request an extension of time to file certain information returns. It will be used by IRS to process requests expeditiously and to track from year-to-year those who repeatedly ask for an extension.

Respondents: Individuals or households, State and local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 45,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping 36 min.

Learning about the law or the form 14 min.

Preparing the form 48 min.

Copying, assembling, and sending the form to the IRS 26 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 93,600 hours.

OMB Number: 1545–1091.

Form Number: IRS Form 8810.

Type of Review: Revision.

Title: Corporate Passive Activity Loss and Credit Limitations.

Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Respondents: Businesses and other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping 25 hrs., 21 min.

Learning about the law or the form 5 hrs., 22 min.

Preparing and sending the form to IRS 6 hrs., 1 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,673,000 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. 91–15017 Filed 6–24–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

June 19, 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.

Departmental Offices

OMB Number: 1505–0010.

Form Number: FC–2.

Type of Review: Extension.

Title: Weekly Consolidated Foreign Currency Report on Foreign Branches and Subsidiaries of United States Banks.

Description: This report is required by title II of Public Law 93–110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 57.

Estimated Burden Hours Per Response: 1 hour, 43 minutes.

Frequency of Response: Weekly.

Estimated Total Reporting Burden: 5,068 hours.

OMB Number: 1505–0012.

Form Number: FC–1.

Type of Review: Extension.

Title: Weekly Foreign Currency Report on Banks in the United States.

Description: This report is required by title II of Public Law 93–110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms, subsidiaries of U.S. banks and other firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 103.

Estimated Burden Hours Per Response: 51 minutes.

Frequency of Response: Weekly.

Estimated Total Reporting Burden: 4,553 hours.

OMB Number: 1505–0013.

Form Number: FC–4.

Type of Review: Extension.

Title: Quarterly Consolidated Report of Assets, Liabilities, and Positions in Specified Currencies of Foreign Branches and Subsidiaries of Firms in the United States.

Description: This report is required by title II of Public Law 93–110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate

data in Treasury Bulletin quarterly. Affects large multinational non-banking firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 154.

Estimated Burden Hours Per Response: 2 hours, 39 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 1,632 hours.

OMB Number: 1505–0014.

Form Number: FC–3.

Type of Review: Extension.

Title: Monthly Report of Assets, Liabilities, and Positions in Specified Foreign Currencies of Firms in the United States.

Description: This report is required by title II of Public Law 93–110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 54.

Estimated Burden Hours Per Response: 1 hour, 56 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Dale A. Morgan (202) 566–2693, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–15013 Filed 6–24–91; 8:45 am]

BILLING CODE 4810–25–M

Secret Service

Appointment of Performance Review Board (PRB) Members

AGENCY: Secret Service, Treasury.

ACTION: Appointment of Performance Review Board Members.

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1990 and ending June 30, 1991. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Guy P. Caputo—Deputy Director, U.S. Secret Service.

Hubert T. Bell—Assistant Director, Protective Operations (USSS).

George J. Opfer—Assistant Director, Inspection (USSS).

David C. Lee—Assistant Director, Administration (USSS).

Robert R. Snow—Assistant Director, Government Liaison & Public Affairs (USSS).

Don A. Edwards—Assistant Director, Training (USSS).

H. Terrence Samway—Assistant Director, Protective Research (USSS).

Raymond A. Shaddick—Assistant Director, Investigations (USSS).

John J. Kelleher—Chief Counsel, U.S. Secret Service.

FOR ADDITIONAL INFORMATION, CONTACT: Susan T. Tracey, Chief, Personnel Division, room 901, 1800 G Street, NW., Washington, DC 20223, telephone no. 202–535–5635.

John R. Simpson,

Director.

[FR DOC. 91–15007 Filed 6–24–91; 8:45 am]

BILLING CODE 4810–42–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 26189.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, June 25, 1991.

CHANGE IN THE AGENDA: The Commodity Futures Trading Commission has cancelled the discussion of the Proposed revision to Registration Requirements, Part 3.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15159 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 26, 1991.

PLACE: 2033 K. St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15160 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 19, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15161 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 12, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 5, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15163 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

(June 19, 1991)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 26, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 940th Meeting—June 26, 1991, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 11116-001, Town of Moreau, New York
CAH-2.
Project No. 2438-002, New York State Electric & Gas Company
CAH-3.
Docket No. RM89-7-001, Regulations Governing the Submittal of Proposed Hydropower License Conditions and Other Matters
CAH-4.
Project Nos. 4685-005, 10457-001 and 10470-002, Long Lake Energy Corporation
CAH-5.
Project Nos. 7728-012, 013 and 014, Robley Point Hydro Partners Limited Partnership
CAH-6.
Project No. 7004-006, City of Rock Falls, Illinois
CAH-7.
Project No. 8747-005, Power Resources Development Corp.
CAH-8.
Docket No. UL88-23-004, City of Seattle, Washington
CAH-9.
Docket No. RM83-56-001, Application for License, Permit, and Exemption from Licensing for Water Power Projects
CAH-10.
Project No. 8263-004, Summit Hydropower
CAH-11.
Project No. 3701-001, Yakima Teton Irrigation District
CAH-12.
Omitted
CAH-13.
Project Nos. 1984-021, 023, 025, 026, 027, 028, 029, 030, 033, 037, 039, 043 and 044, Wisconsin River Power Company

Consent Agenda—Electric

CAE-1.
Docket No. ER91-360-000, Pennsylvania Power & Light Company
CAE-2.
Docket No. ER91-20-000, Pennsylvania-New Jersey-Maryland Interconnection
CAE-3.
Docket No. ER91-401-000, Wallkill Generating Company, L.P.
CAE-4.
Docket No. ER91-379-001, UNITIL Power Corp.
CAE-5.
Docket No. ER91-195-001, Western Systems Power Pool
CAE-6.
Docket Nos. ER90-269-001, *et al.*, and ER90-594-000, Indiana Michigan Power Company

Docket No. EL90–37–000, Indiana and Michigan Municipal Distributors Association and the City of Auburn, Indiana v. Indiana Michigan Power Company

CAE–7.
Docket No. EL90–43–000, Oklahoma Municipal Power Authority v. Public Service Company of Oklahoma

CAE–8.
Docket Nos. EC91–9–000, EL91–22–000 and ES91–21–000, UtiliCorp United Inc. and Centel Corporation

CAE–9.
Docket No. EC89–5–000, Southern California Edison Company and San Diego Gas & Electric Company

CAE–10.
Docket No. ER84–75–000, Southern California Edison Company

CAE–11.
Docket No. ER89–53–000, Blue Ridge Power Agency, Central Virginia Electric Cooperative, Inc. and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Company Docket Nos. ER90–132–000 and ER90–133–000, Appalachian Power Company

CAE–12.
Docket No. ID–2524–000, John E. Bryson
Docket No. ID–2417–000, Walter B. Gerken

CAE–13.
Docket No. RM82–11–000, Nornev Demonstration Geothermal Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP91–166–000, Northwest Pipeline Corporation

CAG–2.
Docket No. RP91–165–000, Panhandle Eastern Pipe Line Company

CAG–3.
Docket No. RP91–164–000, Granite State Gas Transmission, Inc.

CAG–4.
Docket Nos. RP91–163–000, Louisiana-Nevada Transit Company

CAG–5.
Docket No. RP91–160–000, Columbia Gulf Transmission Company
Docket No. RP91–161–000, Columbia Gas Transmission Corporation

CAG–6.
Docket Nos. RP91–109–002 and 003, Transwestern Pipeline Company

CAG–7.
Docket No. RP89–1281–011, Natural Gas Pipeline Company of America

CAG–8.
Docket No. RP91–167–000, Tennessee Gas Pipeline Company

CAG–9.
Docket No. RP91–162–000, El Paso Natural Gas Company

CAG–10.
Docket No. RP91–159–000, Florida Gas Transmission Company

CAG–11.
Docket Nos. RP91–103–000, 001, 002 and 003, Alabama-Tennessee Natural Gas Company

CAG–12.
Docket No. TA91–1–8–000, South Georgia Natural Gas Company

CAG–13.
Docket No. TM91–2–29–000, Transcontinental Gas Pipe Line Corporation

CAG–14.
Docket No. TM91–7–17–000, Texas Eastern Transmission Corporation

CAG–15.
Docket Nos. TM91–8–37–000, Northwest Pipeline Corporation

CAG–16.
Docket Nos. TQ91–3–1–000, and 001, Alabama-Tennessee Natural Gas Company

CAG–17.
Docket Nos. TQ91–6–59–000, and 001, Northern Natural Gas Company

CAG–18.
Docket Nos. RP89–35–002, 003, RP89–36–001, 002 and RP86–33–011, Midwestern Gas Transmission Company

CAG–19.
Docket Nos. RP90–82–000 and RP91–36–001, Northern Natural Gas Company

CAG–20.
Docket Nos. RP85–209–019, RP88–27–008, 010, RP88–264–002, RP89–138–003, RP89–147–008, 009, 010 and RP90–91–002, United Gas Pipe Line Company

CAG–21.
Omitted.

CAG–22.
Docket No. TA88–3–27–001, Southern Natural Gas Company

CAG–23.
Docket Nos. RP91–109–001, CP90–2026–001, RP90–136–002, RP91–104–002 and RP91–106–002, Transwestern Pipeline Company

CAG–24.
Docket No. RP91–51–005, *et al.*, CNG Transmission Corporation

CAG–25.
Docket Nos. RP91–41–004, and 000, *et. al.*, Columbia Gas Transmission Corporation

CAG–26.
Docket No. RP91–123–002, Canyon Creek Compression Company

CAG–27.
Docket No. RP91–79–005, East Tennessee Natural Gas Company

CAG–28.
Docket No. RP91–132–001, Colorado Interstate Gas Company

CAG–29.
Docket No. RP91–128–001, Viking Gas Transmission Company

CAG–30.
Docket Nos. RP91–126–002, CP91–1669–001, CP91–1670–001, CP91–1671–001, CP91–1672–001 and CP91–1673–001, United Gas Pipe Line Company

CAG–31.
Docket Nos. TA91–1–21–001 and TM91–8–21–001, Columbia Gas Transmission Corporation

CAG–32.
Docket Nos. TM90–3–42–005, RP90–49–003, CP88–99–014, TM90–5–42–002, RP86–126–007 and RP90–43–002, Transwestern Pipeline Company

CAG–33.
Docket Nos. IS85–9—001, OR85–1–001 and OR90–1–001, Kuparuk Transportation Company

CAG–34.
Docket No. RP91–68–005, Penn-York Energy Coproration

CAG–35.
Docket No. RP90–22–012, Algonquin Gas Transmission Company

CAG–36.
Docket No. RP90–69–006, Colorado Interstate Gas Company

CAG–37.
Docket Nos. RP88–115–015, CP89–31–002, CP88–818–002 and CP89–59–003, Texas Gas Transmission Corporation

CAG–38.
Docket Nos. TM90–10–28–001, TM90–11–28–001, TM91–2–28–003 and TM91–3–28–003, Panhandle Eastern Pipe Line Company

CAG–39.
Docket No. TA91–1–31—003, Arkla Energy Resources, a Division of Arkla, Inc.

CAG–40.
Docket Nos. TA91–1–9–000, 001, TM91–1–9–001, TM91–2–9–00 and RP91–16–000, Tennessee Gas Pipeline Company

CAG–41.
Docket No. FA91–50—001, Natural Gas Pipeline Company of America

CAG–42.
Docket No. CP86–250–003, Ozark Gas Transmission System

CAG–43.
Omitted

CAG–44.
Docket No. RP86–46–000, Minnesota Public Utilities Commission and Department of Public Service, Iowa State Commerce Commission and Peoples Natural Gas Company, Division of UtiliCorp United Inc. v. Northern Natural Gas Company

CAG–45.
Docket No. FA899—001, Williston Basin Interstate Pipeline Company

CAG–46.
Docket No. GP90–10—000, Elf Aquitaine Operating, Inc.

CAG–47.
Docket No. GP90–15–001, El Paso Natural Gas Company v. Kaneb Energy Company and Kaneb Operating Company, Ltd.

CAG–48.
Docket Nos. CI86–440–000, CI86–441–000, CI86–446–000 and CI86–507–000, United Gas Pipe Line Company

CAG–49.
Docket No. CP90–643–001, Algonquin Gas Transmission Company

CAG–50.
Docket Nos. CP90–1014–001, Panhandle Eastern Pipe Line Company and Pan Gas Storage Company, d.b.a., Southwest Gas Storage Company

CAG–51.
Docket No. CP91–50–001, Sumas Energy, Inc.

CAG–52.
Docket No. CP85–625–002, Northwest Pipeline Corporation

CAG–53.
Docket Nos. CP88–760–003 and 006, Transcontinental Gas Pipe Line Corporation

CAG–54.
Docket Nos. CP90–2294–000 and 001, Transwestern Pipeline Company

CAG–55.
Docket No. CP91–969–001, CNG Transmission Corporation

CAG–56.
Docket No. CP90–68–001, Tennessee Gas Pipeline Company
CAG–57.
Omitted
CAG–58.
Docket No. CP91–348–000, Transcontinental Gas Pipe Line Corporation
CAG–59.
Docket Nos. CP82–487–014 and 034, Williston Basin Interstate Pipeline Company
CAG–60.
Docket Nos. CP90–1111–0000 and 001, East Tennessee Natural Gas Company
Docket Nos. CP91–432–000 and 001, Tennessee Gas Pipeline Company
CAG–61.
Docket No. CP91–228–000, Natural Gas Pipeline Company of America
CAG–62.
Docket No. CP91–1111–000, Algonquin Gas Transmission Company
CAG–63.
Docket No. CP89–2101–000, Algonquin Gas Transmission Company
CAG–64.
Docket No. CP90–870–000, Northwest Pipeline Corporation
CAG–65.
Docket No. CP90–2214–000, El Paso Natural Gas Company
CAG–66.
Docket No. CP91–1110–000, Colorado Interstate Gas Company
CAG–67.
Docket No. CP91–780–000, Northwest Pipeline Corporation
CAG–68.
Docket Nos. CP89–1571–000 and 001, Niagara Mohawk Power Corporation
CAG–69.
Docket No. CP89–484–000, Transcontinental Gas Pipe Line Corporation
CAG–70.
Docket No. CP91–1910–000, Southwestern Public Service Company v. Red River Pipeline Company
CAG–71.
Docket No. CP91–1927–000, Midwestern Gas Transmission Company
CAG–72.
Docket No. CP91–665–001 and CP91–669–001, Columbia Gulf Transmission Company
CAG–73.
Docket No. CP90–2314–000, Tennessee Gas Pipeline Company
CAG–74.
Docket No. CP88–686–002, Texas Gas Transmission Corporation
CAG–75.
Docket No. CP90–1391–001, Arcadian Corporation
CAG–76.
Docket No. CP90–2155–001, Southern Natural Gas Company
CAG–77.
Docket No. CP83–140–007, K N Energy, Inc.
CAG–78.
Docket No. CP91–1278–001, Pittsburgh Corning Corporation

Hydro Agenda

H–1.
Project No. 1417–032, Central Nebraska Public Power and Irrigation District. Application to amend license.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1(A).
Docket No. RP87–15–019, Trunkline Gas Company. Order on initial decision.
PR–1(B).
Docket No. RP87–15–001, Trunkline Gas Company. Order on rehearing.
PR–1(C).
Docket No. RP87–15–027, (Phase I), Trunkline Gas Company. Order on remand.
PR–1(D).
Docket Nos. RP87–15–026 and 028, Trunkline Gas Company. Order on rehearing.

II. PF–1.

Reserved

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP89–460–000, 001, 003, 006, 007 and CP90–1–001, Pacific Gas Transmission Company. Order on certificate application.
PC–2.
Docket Nos. CP90–1372–000, 001, CP90–1373–000, 001, CP90–1374–000, 001, CP90–1375–000 and 001, Altamont Gas Transmission Company. Order on certificate application.
PC–3.
Docket No. CP91–1884–000, Great Lakes Gas Transmission Limited Partnership. Order on certificate application.
PC–4.
Docket No. CP90–1389–000, Great Lakes Gas Transmission Company. Order on certificate application.
PC–5.
Docket Nos. CP90–316–000 and 001, Empire State Pipeline
Docket Nos. CP90–854–000, 001, CP90–920–000, CP90–967–000 and CP90–968–000, National Fuel Gas Supply Corporation
Docket Nos. CP90–1989–000 and 001, CNG Transmission Corporation
Docket No. CP91–724–000, Tennessee Gas Pipeline Company. Order on certificate application.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15124 Filed 6–20–91; 4:37 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Matters To Be Added and 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 added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, June 25, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Memorandum and resolution re: FDIC Appointment of FDIC as Receiver of Insured State Depository Institutions.

At that same meeting, the following matter will be withdrawn from consideration:

Memorandum re: Changes to the Section 19 Policy Statement and Guidelines.

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: June 20, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–15158 Filed 6–21–91; 2:44 pm]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 20, 1991

TIME AND DATE: 2:00 p.m., Thursday, June 27, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Lanham Coal Company, Inc.*, Docket No. KENT 89–186. (Issues include whether the judge erred in finding that Lanham violated 30 CFR § 77.1710(g) and that the Secretary did not abuse her discretion by citing Lanham rather than an independent contractor for the alleged violation).
2. *Lang Brothers, Inc.*, Docket No. WEVA 90–58. (Issues include whether the judge erred in finding that the gas well cleaning and plugging operation of Lang Brothers is subject to the jurisdiction of the Mine Act and that Lang Brothers is an independent contractor-operator under the Mine Act, 30 USC § 801 *et seq.*).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION Jean Ellen (202) 653–5629/

(202) 708–9300 for TDD Relay, 1–800–877–8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91–15169 Filed 6–21–91; 2:45 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 28, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposal to modify and clarify the Federal Reserve Board's risk-based capital guidelines. (Proposed earlier for public comment; Docket No. R–0709)

Discussion Agenda

2. Proposed 1992 Federal Reserve Board budget guideline.
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 91–15165 Filed 6–21–91; 2:45 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, June 28, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 91–15166 Filed 6–21–91; 2:45 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, July 1, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–15255 Filed 6–21–91; 3:37 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE NOTICE

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on July 9, 1991. The meeting will commence at 9:30 a.m.

PLACE: Hyatt Regency Washington, 525 New Jersey Avenue, NW., The Bryce Room, Washington, DC 20001, (202) 737–1234.

STATUS OF MEETING: Open [A portion of the meeting will be closed, pursuant to the following vote by a majority of the Board of Directors, to discuss personnel-related and personal matters as authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2) and (6)], and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a) and (e)].

Board Member, Vote

Howard Dana, Jr.—Yes
J. Blakeley Hall—Yes
Jo Betts Love—Yes
Penny L. Pullen—Yes
Thomas D. Rath—Yes
Basile Uddo—Yes
George W. Wittgraf—Yes
Jeanine E. Wolbeck—Yes

A portion of the meeting will be closed to preserve the applicants' personal privacy and to discuss strictly internal personnel rules and practices. Specifically, the Committee will interview candidates for the position of Inspector General in the closed session. Additionally, the Committee may resolve to recommend certain candidates interviewed by the Committee to the Board of Directors for further consideration by the Board of Directors for the position of Inspector General.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of June 3, 1991 Meeting.

Closed Session:

3. Interview of Applicants for the Position of Inspector General of the Legal Services Corporation and Consider and/or Settle on Possible Recommendation to the Board of Directors Regarding Applicants to be Considered by the Board of Directors for Position of Inspector General.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date issued: June 21, 1991.

Patricia D. Batie,

Corporate Secretary.

AGDAOIG.7991/

[FR Doc. 91–15217 Filed 6–21–91; 2:45 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 24, July 1, 8, and 15, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 24

Friday, June 28

8:15 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Staff Evaluation and Recommendation on Maintenance Rulemaking (Tentative)
b. Nuclear Power Plant License Renewal (Tentative)
c. Proposed Amendments to 10 CFR Part 21, "Reporting of Defects and Noncompliance" and 10 CFR 50.55(e), "Conditions of Construction Permits" (Tentative)
d. Emergency Response Data System (Tentative)

Week of July 1—Tentative

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 8—Tentative

Thursday, July 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 15—Tentative

Tuesday, July 16

10.00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, July 19

10:00 a.m.
Briefing on Generic Environmental Impact Statement for License Renewal and Proposed Part 51 Rule (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3–0 on June 20 (Commissioner Rogers not present), the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Motion to Quash Subpoena Issued by the NRC Staff to Richard E. Dow" (Public Meeting), be held on June 20, and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–15239 Filed 6–21–91; 3:37 pm]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Student Financial Aid Programs in Which Race, Color or National Origin is a Factor

Correction

In notice document 91-12719 beginning on page 24383, in the issue of Thursday, May 30, 1991, in the second column, in the **SUMMARY**, in the ninth line "200d" should read "2000d".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2283-004-Maine]

Central Maine Power Co.; Availability of Environmental Assessment

Correction

In notice document 91-14680 beginning on page 28377 in the issue of Thursday, June 14, 1991, make the following correction:

On page 28377, in the first column, the project number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3965-4]

General Preamble for Title I of the Clean Air Act Amendments of 1990

Correction

In notice document 91-14203 beginning on page 27257, in the issue of Thursday, June 13, 1991, in the second column, under "**DATES**", in the second line, "to 3 p.m." should read "to 5 p.m. and June 26 from 9 a.m. to 3:30 p.m.".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-7]

Coastal Nonpoint Source Pollution Management Measures Guidance

Correction

In notice document 91-13534 beginning on page 27618, in the issue of Friday, June 14, 1991, in the first column, under **ADDRESSES**, in the last line "August 2, 1991." should read "July 5, 1991.".

BILLING CODE 1505-01-D

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37 CFR Part 201

[Docket Nos. RM 90-2 and 89-1]

Refund of Excess Fees; Berne Implementation Act Technical Amendments

Correction

In rule document 91-14029 beginning on page 27196, in the issue of Thursday, June 13, 1991, make the following correction:

On page 27197, in the first column, under **PART 201--[CORRECTED]**, in the first paragraph, in the third line "§ 210.19" should read "§ 201.19", and in the fifth line "§ 201.19" should read "§ 210.19".

BILLING CODE 1505-01-D

federal register

Tuesday
June 25, 1991

Part II

Securities and Exchange Commission

17 CFR Parts 229, 239, and 240

Limited Partnership Roll-Up Transactions; Proposed Rule

17 CFR Parts 231 and 241

Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests; Interpretive Release

17 CFR Part 240

Securityholder Communications Regulation; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239 and 240

[Release Nos. 33-6899; 34-29313; File No. S7-21-91]

RIN: 3235-AE45

Limited Partnership Roll-Up Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed rules intended to enhance the quality and readability of information provided to investors in connection with limited partnership roll-up transactions. The proposals would heighten the disclosure requirements with respect to, among other matters, conflicts of interest and fairness of a roll-up transaction, similar to those governing going private transactions. Enhanced disclosure regarding the reasons for proposing the roll-up, alternatives considered by the general partner, valuation methods used and pro forma financial information also would be called for. Information relating to security holders' appraisal and dissenters' rights, changes in voting rights, and rights to a limited partnership list would be required as well. Because a roll-up transaction often has different effects and risks as between investors in the subject limited partnerships, the proposed rules would require delivery of individual partnership prospectus supplements setting forth partnership specific information along with the proxy statement/prospectus to investors in each such partnership. Technical amendments to the business combination registration statements under the Securities Act of 1933, Forms S-4 and F-4, also are being proposed.

Further, the Commission proposes to establish a minimum proxy solicitation period of 60-calendar days prior to a limited partners' meeting at which a roll-up transaction will be submitted to a vote, or 60-calendar days prior to the earliest date on which partnership action could be taken by consent. If, under applicable state law, the maximum period permitted for giving notice is less than 60 calendar days, the state law maximum notice period would apply. A 60-calendar day offering period also is proposed for roll-ups structured as exchange offers subject to the Williams Act.

Additionally, the Commission is concurrently publishing a companion release [1] that sets forth the Commission's interpretive views of existing disclosure requirements applicable to both limited partnership roll-up transactions and initial public offerings of limited partnership units.

DATES: Comments should be received on or before August 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Mail Stop 6-10, Washington, DC 20549. Comment letters should refer to File No. S7-21-91. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael L. Hermsen or Meredith B. Cross at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed new subpart 900 of Regulation S-K [2] and technical revisions to Forms S-4 and F-4 under the Securities Act of 1933 ("Securities Act"), [3] the registration forms generally used in roll-up transactions. These proposals would be applicable to registration forms filed with the Commission in connection with limited partnership roll-up transactions, as defined in the rule proposals. The Commission also is proposing a minimum 60-calendar day solicitation or offering period for roll-up transactions.

I. Executive Summary

Roll-ups have created considerable controversy. Critics have questioned the abuses which have occurred in roll-up transactions and the fundamental fairness of the transactions. [4] Some of the more serious questions raised deal with the methods used to value the securities issuable in exchange for investors' limited partnership interests, the use of differential fees paid to broker-dealers in the solicitation process, [5] and the general partner's fiduciary duties to the limited partners, including its potential conflicts of interest and lack of independence in structuring and negotiating the terms of a transaction. Critics have questioned the potential overreaching by the general partners inherent in the increased benefits accruing to them in most roll-up transactions, including payments for general partnership interests and changes in compensation arrangements. These criticisms have been voiced in investor complaints to the Commission and Congressional hearings on roll-ups of limited partnerships. [6]

When a roll-up is proposed, investors are concerned that because of a limited resale market, a limited partner may find itself forced to exchange its limited partnership interest for a significantly different security in an entirely new entity. Changes in the new entity's borrowing policies, business plan, investment objectives, term of existence and the voting rights of investors frequently result in the investor holding a fundamentally different investment. Limited partners objecting to a roll-up transaction have especially criticized the absence of any legal or equitable alternative to the transaction and the "cram down" effect on objecting partners.

In light of these significant criticisms, the Commission has been re-examining the adequacy of the rules and regulations applicable to roll-ups. A number of specific suggestions made by investors and commenters to improve

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[1] See Securities Act Release No. 33-6900 (June 17, 1991).

[2] 17 CFR part 229.

[3] 17 CFR 239.25 and 17 CFR 239.34; 15 U.S.C. 77a *et seq.*

[4] See, e.g., Written Testimony of Richard G. Wollack, Chairman of Liquidity Fund Management, Inc. Before the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs, United States Senate ("Senate Subcommittee") at 10 (February 27, 1991) and Written Testimony of Michael Joseph Connolly, Secretary of State, Commonwealth of Massachusetts. Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives ("House Subcommittee") at 1 (April 23, 1991).

[5] A National Association of Securities Dealers, Inc. ("NASD") rule proposal to prohibit payments to brokers and investment advisers for "yes" votes, was published for comment in Securities Exchange Act Release No. 29228 (May 23, 1991) 56 FR 24436 (May 30, 1991). The comment period ends June 14, 1991. Prior to adoption of the rule, prominent disclosure is required of such arrangements, as well as the potential conflicts of interest inherent in this fee structure.

[6] October 3, 1990, March 21, 1991 and April 23, 1991 Before the House Subcommittee; and February 27, 1991 Before the Senate Subcommittee. See also, What's Wrong With Roll-Ups?, Financial Planning, May 1990 at 48; Partnership 'Roll-Ups' Spark A Backlash, Wall Street Journal, October 3, 1990 at C1; How One Investor Lost Her Fight Against a Roll-Up, Barron's, February 4, 1991 at 56; When Limited Partnerships Get Lumped Together, Business Week, February 11, 1991 at 88; and, Partnership 'Rollups' Leave Some Investors Down, Washington Post, February 15, 1991 at F1.

the quality of the information provided to investors require new rules. [7]

One main criticism not addressed under the current rules and regulations is that the requirements do not address the complexities involved in combining a number of different entities. Uncertainties arise when combinations of entities, other than those contemplated in the pro forma financial statements or the fairness opinions for example, are permitted to consummate the transaction. Valuation problems arise when trying to allocate interests among two or more entities. Investors in one partnership may not have sufficient historical information concerning the business plan or other historical aspects of all partnerships subject to a roll-up to make an informed investment decision. Another criticism is that the disclosure does not adequately and clearly address the changed terms of an investment and the different, material detriments, benefits and effects to be felt by the investors, both limited partners and general partners, in each of the various partnerships subject to a roll-up. The combined effect of all of these changes may substantially increase the risks of the investment.

The rules and amendments proposed today are intended to enhance the substance of the information provided to investors to allow them to assess both the merits of the proposed transaction and the general partner's compliance with its fiduciary duties to the limited partners. These proposals include new disclosure requirements and codify interpretive positions of existing disclosure requirements. The Commission invites suggestions on the appropriateness and necessity of the rules as proposed and also on whether there are actions that the Commission should take to assure that limited partners are provided full, fair and comprehensible disclosure sufficient to make an informed decision as to the merits of the roll-up transaction and the consistency of the transaction with the general partner's duties under state law.

[7] *See* Written Testimony of Richard G. Wollack, Chairman of Liquidity Fund, Inc., Before the House Subcommittee at Appendix E (October 3, 1990); Written Testimony of Cezar M. Froelich, Shefsky & Froelich, Before the House Subcommittee at 10–11 (October 3, 1990); Written Testimony of Christopher L. Davis, President, Investment Partnership Association Before the House Subcommittee at 3–9 (October 3, 1990); and Written Testimony of John Freeman Blake, Chairman, American Association of Limited Partners, Before the House Subcommittee at 18–20 (March 21, 1991).

II. Proposed Disclosure Requirements for Roll-up Transactions

A. Introduction

The proposed rules generally apply to roll-up transactions that are subject to registration under the Securities Act. The Commission is not proposing a new registration form or disclosure schedule for roll-up transactions. Instead, the applicable registration forms [8] would be amended to require roll-up transaction documents to include the information set forth in the new rules in addition to the information otherwise required. To the extent the disclosure requirements of the registration forms or disclosure schedules and the proposed rules address the same subject, the specific requirements applicable to roll-ups would control.

B. Definitions

1. "Roll-up Transaction"

"Roll-up transaction" [9] is defined broadly to include a variety of transactions involving the combination or reorganization of limited partnerships or similar entities and the issuance of new securities. While the definition does not include an "effects" test, these transactions usually change significantly the character of an investment in a limited partnership or similar entity, such as a real estate investment trust. The definition includes a "typical" roll-up transaction such as a merger of two or more finite-life limited partnerships into a new partnership, corporation or real estate investment trust in which limited partners will receive a new security in a successor entity that has different compensation arrangements with the general partner and different investment and/or distribution policies. These policy differences often include, for example, changing from a finite to an infinite-life entity, allowing proceeds to be reinvested in the partnership rather than distributing such proceeds to investors, or changing substantially the stated investment objectives of a partnership. The reorganization of a single partnership into corporate form also would constitute a roll-up transaction under the proposed definition since this restructuring, similar to a "typical" roll-up, involves the issuance of new securities having substantially different rights and investment risks as compared to the subject partnership.

Further, as proposed, compliance with the enhanced disclosure would be required whether or not objecting investors have the ability to "opt out" of the transaction either because the securities of either the entity subject to the transaction or the resultant entity are publicly traded or because such investors 'have dissenters' or appraisal rights to receive the fair value for their investment. Comment is requested on whether the definition should be narrowed to exclude transactions where:

(1) The subject limited partnership interests are listed on a national exchange or traded in the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ");

(2) The limited partner is entitled to dissenters' or appraisal rights, by law, under the terms of the partnership agreement, or the roll-up;

(3) The limited partner does not have an exchange or NASDAQ traded security and is not being offered an exchange or NASDAQ traded security;

(4) The successor issuer has substantially the same business plan, and investment and/or distribution policies and offers limited partners of the subject partnership a security with substantially the same rights as their current security; or

(5) The transaction relates solely to a single partnership reorganization.

Alternatively, comment is requested on the appropriateness of a limited exclusion from some but not all of the proposed disclosure requirements. Commenters favoring this approach should specifically identify which disclosure requirements would be within this limited exclusion and fully discuss the bases for their position.

Commenters also should address the appropriateness of broadening the proposed definition to include other types of transactions that involve one or more amendments to the partnership's governing instruments but not the issuance of a new security. These amendments may include (a) a change in voting rights to increase the percentage needed to approve a proposal, such as requiring 66⅔% vote to remove the general partner; and (b) a material change in the partnership's liquidation policy to permit the reinvestment of proceeds received from the sale or refinancing of assets rather than distributing such proceeds to limited partners.

2. Other Defined Terms

Other terms defined in the new rules include "general partner," [10]

[8] Forms S–4 and F–4.

[9] Proposed Item 901(c).

[10] Proposed Item 901(a).

"sponsor," [11] "partnership" [12] and "successor." [13] These definitions are designed to simplify the text of the disclosure items while requiring information about all relevant parties. For example, the term "sponsor" would refer to the person proposing a roll-up transaction whereas "general partner" refers to the person responsible under state law for managing the business and affairs of a limited partnership subject to the transaction. While the sponsor and general partner may be the same person in affiliated roll-up transactions, this would not be the case in third-party transactions.

The roll-up transaction rules would apply to the specified transactions if any of the entities proposed to be rolled-up is a "partnership" as defined in the rules. Roll-up transactions generally have involved entities formed for specific limited purposes that under federal tax laws are not taxed at the entity level and pass through income or loss to their investors. Because these attributes, especially the entity's federal income tax status, are not solely dependent on its legal form under state law, the proposed definition of "partnership" is intentionally broad. As proposed, the term would include any partnership, trust, real estate investment trust ("REIT"),[14] or any other similar entity that is not an association taxed as a corporation under federal tax law.[15] Commenters are specifically requested to address whether the definition covers all entities, regardless of their legal form, having attributes similar to a limited partnership that should be subject to the enhanced roll-up disclosure requirements. Comment also is requested as to whether certain entities encompassed within the definition should be excluded; if so, the basis for such view should be provided.

The proposed rules define "successor" to mean the partnership, corporation, real estate investment trust or other entity that exists after completion of a roll-up transaction. Under this definition, the successor would be the issuer of the securities being offered to investors in the roll-up transaction.

[11] Proposed Item 901(d).

[12] Proposed Item 901(b).

[13] Proposed Item 901(e).

[14] The term "real estate investment trust" is defined in I.R.C. section 856.

[15] For example, in a combination of REITs to form a new corporation, the REITs would be deemed to be "partnerships" (whether in corporate, partnership or trust form) and subject to the heightened roll-up disclosure requirements.

C. Proposed Additional Disclosure Requirements

1. General

The proposed disclosure for roll-up transactions will be in addition to that currently required under the Commission's existing rules and regulations. Issuers engaged in a roll-up transaction must comply with the proposed disclosure items discussed below as well as the instructions and disclosure items set forth in the business combination registration forms.

In many instances, the disclosure required under the proposed rules also would be required under existing rules. The proposed rules are intended to codify existing interpretations and make clear the specific information that must be provided in a roll-up transaction to assure that investors are able to understand the disclosure document and evaluate the merits of the transaction.

The proposed disclosure items do not change the existing rules regarding the circumstances under which information about the issuer and subject partnership may be incorporated by reference into the registration statement. Therefore, for example, if the subject partnership is a real estate entity, property information may continue to be incorporated by reference to the extent permitted by the applicable registration form. [16]

2. Individual Partnership Supplements

In most roll-up transactions, two or more partnerships will be combined to form a new partnership, corporation, real estate investment trust or other entity. Depending upon the circumstances of each partnership, the roll-up transaction may have significantly different effects on investors in the partnerships. [17] However, investors may not fully appreciate the important differences when the effects of the roll-up transaction are described for all partnerships together in one disclosure document.

[16] See General Instruction C.2. to Form S-4 and F-4.

[17] Examples of roll-up transactions that would have different effects on investors include: (i) Combining partnerships that do not use debt to purchase assets with partnerships that do use debt; (ii) combining partnerships that invest in different types of assets (*e.g.*, commercial office buildings and residential apartment buildings); (iii) combining partnerships that hold significant cash or other liquid assets with partnerships that have little or no liquid assets; (iv) combining partnerships that are making cash distributions to limited partners with partnerships that are not making distributions; and (v) combining partnerships that are classified as "publicly traded partnerships" under 7704 of the Internal Revenue Code with partnerships that are not so classified.

To address these concerns and facilitate an investor's ability to judge the merits of a roll-up transaction, the disclosure documents consist of two parts. The basic disclosure document continues to contain a detailed discussion of all information material to the roll-up transaction. The proposed rules require a separate disclosure supplement for each partnership.[18] The supplement does not serve as a summary of the roll-up transaction for investors in the partnership but, rather, highlights the most significant effects of the roll-up to investors in each partnership. The proposed supplement also is not a substitute for clear disclosure in the basic disclosure document of differing effects on particular partnerships otherwise required under the existing and proposed rules.[19] Under the proposal, the investor would receive the basic disclosure document, plus the supplement applicable to his specific partnership. The investor would not receive the supplements prepared with respect to other partnerships.

The supplement describes any material risks, adverse effects or benefits of the roll-up transaction that may affect investors in the partnership differently from investors in other partnerships.[20] The supplement also would be required to include a discussion of whether the sponsor reasonably believes the roll-up transaction is fair or unfair to investors in the particular partnership.[21] In order

[18] Proposed Item 902.

[19] See proposed Item 904.

[20] Proposed Item 904, "Effects of the Roll-Up Transaction," requires the principal disclosure document to include a discussion of the effects of the roll-up transaction on investors in each partnership, including the potential risks, adverse effects and benefits of the roll-up transaction. See section II.C.4. *infra* for a discussion of the disclosure required by proposed Item 904. The supplement required by Item 902 would highlight those effects discussed in response to Item 904 that may be different for investors in the partnership covered by the supplement.

[21] Proposed Item 909 requires the principal disclosure document to include a discussion of the sponsor's views concerning the fairness or unfairness of the roll-up transaction for investors in each partnership. See section II.C.6. *infra* for a discussion of the disclosure required by proposed Item 909. Proposed Item 902 requires the supplement to include a statement of the sponsor's reasonable belief as to the fairness of the roll-up transaction for investors in the particular partnership and a discussion of any material differences in the overall fairness analysis applicable to the partnership. The supplement would refer investors to the appropriate section in the principal disclosure document for the complete Item 909 discussion.

to illustrate the financial statement effects of the roll-up transaction on the particular partnership, the supplement includes pro forma financial statements based upon a combination of partnerships that produces the lowest amount of cash flow from operations,[22] further adjusted to include the partnership.[23] These pro forma financial statements would be accompanied by a brief discussion of the material changes to such statements caused by the inclusion of the partnership therein.

In addition, when two or more partnerships are to be combined, interests in the successor typically are allocated among investors in the various partnerships according to a dollar value assigned to each partnership. While the basic disclosure document explains the method of allocating the interests and shows the value assigned to each partnership, the level of detail that would be necessary in a combined presentation to enable investors in each individual partnership to thoroughly understand and evaluate the methods used to value their partnership, would further complicate an already unwieldy document. Therefore, the value assigned to the partnership for purposes of allocating interests in the successor is explained narratively in the supplement and illustrated in a table showing each principal component of the calculation of the partnership's value.

The Commission requests comment on whether other information should be required to be included in the supplement, such as financial statements of the partnership or additional information concerning the business of the partnership. The Commission also requests comment on whether it may be appropriate in some cases to permit more than one partnership to be included in a supplement, such as when the effects of a roll-up transaction would be substantially the same for groups of partnerships proposed to be included. Finally, the Commission proposes that the supplement be provided as an attachment to the disclosure document only to investors in the partnership covered by the particular supplement.

[22] Proposed Item 915, "Pro Forma Financial Statements; Selected Financial Data," requires pro forma financial statements (before adjustments to include the partnership covered by the supplement) to be included in the principal disclosure document. See section II.C.10. *infra* for a discussion of the information required by proposed Item 915.

[23] This requirement would apply only if (i) the roll-up transaction may be completed with a combination of partnerships other than all partnerships proposed to be included and (ii) the partnership covered by the supplement is not already included in the pro forma financial statements required by proposed Item 915.

However, the Commission requests comment on whether each supplement should be provided to investors in all partnerships proposed to be included in the roll-up transaction so that investors may compare the effects of the transaction on the various partnerships.

3. Summary

In response to concerns raised about the readability of roll-up transaction disclosure documents, the proposed rules include a specific requirement to provide a clear, concise and comprehensible summary of the roll-up transaction. Although such a summary currently is required under the existing rules, [24] the new rules are intended to improve the summary disclosure provided to investors by requiring specific items to be addressed in the summary. In general, the summary must present a "snapshot" description of the most significant aspects of a roll-up transaction. Under the proposed rules,[25] the summary must contain a summary description of the material terms of the roll-up transaction. The summary also must describe each of the following items and the effects thereof arising in connection with the roll-up transaction, as well as any other material terms or consequences of the roll-up transaction:

- Changes in limited partner voting rights;
- Changes in the successor's business plans or investment policies;
- Changes in management compensation;
- Changes in the form of ownership interest of management in the successor;
- Conflicts of interest of the general partner;
- Likely trading market discount of securities to be received in the roll-up transaction;
- Valuation methods used to allocate securities in the successor to investors in the partnerships;
- The general partner's beliefs concerning whether the transaction is fair or unfair to investors in each partnership;
- Any "fairness" opinion concerning the roll-up transaction, including whether the opinion covers all possible combinations of partnerships, and whether any firm declined to provide a "fairness" opinion;
- Alternatives to the roll-up transaction considered by the general partner, as well as the alternatives to continue or liquidate the partnerships whether or not considered by the general partner;
- Investors' rights to exercise dissenters' or appraisal rights;
- Investors' rights to obtain a list of limited partners; and
- If affiliates of the general partner or the sponsor may participate in the successor's business or receive compensation from the successor, an organizational chart showing the relationships between such persons.

[24] See rule 421(b) of Regulation C (17 CFR 230.421(b)) and Item 503(a) of Regulation S–K (17 CFR 229.503(a)).

[25] Proposed Item 903.

Comment is requested as to whether other information in addition to or in lieu of that required by the proposed rule should be included in the summary. Commenters should specifically describe any suggested additional disclosure requirements and/or any items believed unnecessary, as well as the reasons therefor.

4. Effects of the Roll-up Transaction

a. *General requirements.* Because roll-up transactions typically involve important risks and adverse effects for investors and benefits for sponsors, the disclosure document must contain a clear description of the effects of the transaction. Although under the current disclosure rules roll-up transaction disclosure documents include a description of the effects of the transaction, concerns have been raised about the adequacy of such disclosure. In order to clarify and make more specific the disclosure requirements in this area, the proposed rules include specific disclosure requirements concerning the effects of the roll-up transaction.[26]

The proposed rules would require both a brief description of each material effect of the roll-up transaction on investors in each partnership, including, without limitation, the potential risks, adverse effects and benefits of the transaction, and a complete description of each material change affected by the transaction. These changes include such matters as the compensation and cash distribution arrangements, limited partner voting rights and fiduciary duties of the general partner. If any effect would be different for investors in any of the partnerships, such differences would be discussed. As more fully discussed below, specific effects that must be described are included in the proposed rules. The proposed rules would require each effect to be quantified to the extent possible. For example, under the proposed rules, if cost savings resulting from combined partnership administration is described as a potential benefit of the roll-up transaction, the disclosure would include the amount of the cost savings and a comparison of the amount to the costs of the roll-up transaction. The proposed rules also require a description of each potential benefit for the sponsor arising from the roll-up transaction.

b. *Changes in general partner compensation and distribution*

[26] Proposed Item 904.

arrangements. A principal concern raised by commenters about roll-up transactions is a lack of adequate disclosure concerning the compensation to be paid to the sponsor and its affiliates after the roll-up transaction. Commenters are concerned that investors are unable to understand the nature of the compensation to be paid, the conflicts of interest presented by the compensation and the changes in the compensation brought about by the roll-up transaction. The proposed rules would address this concern by requiring specific information about the compensation payable to the sponsor (or others) after the roll-up transaction and a comparison of the compensation to that paid before the transaction.[27]

The proposed rules first would require a description of each item of compensation (including reimbursement of expenses and cash distributions) payable by the successor after the roll-up transaction to the sponsor and its affiliates or to any other person that will be an affiliate of the successor.[28] Also, the material conflicts of interest presented by the proposed compensation and cash distribution structure, and the steps proposed by the sponsor to resolve such conflicts would be identified by the sponsor.[29]

Second, a comparison of the compensation paid by each partnership before the roll-up transaction and proposed to be paid by the successor after the roll-up transaction would be required. The narrative discussion would be illustrated in a table that shows the actual amounts of compensation paid to the sponsor or its affiliates by the partnerships for the last three fiscal years and the amounts that would have been paid if the new compensation structure had been in effect.[30] If any proposed changes in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid from that shown in the table, any such changes and the effects thereof would be described.

The Commission proposes that the comparative compensation table be presented in the principal disclosure document on a combined basis for all partnerships proposed to be included. Individual partnership comparative compensation information would be included in the separate partnership supplements. However, comment is requested concerning whether other comparative compensation information should be required such as information for different combinations of partnerships.

c. *Changes in voting and other rights of and duties owed to investors.* Roll-up transactions often involve important changes in the rights of investors and the duties owed by the sponsor to investors. For example, in many roll-up transactions, the governing instruments of the successor require a greater vote to remove the sponsor than would be required under the partnership agreements of the partnerships to be included in the roll-up transaction. Commenters have expressed concerns that the disclosure contained in roll-up transaction documents does not adequately inform investors about these important changes.

In response to these concerns, the proposed rules specifically require a description of each material difference between the rights of investors and the duties owed to investors before and after the roll-up transaction. The comparison would discuss the provisions of the relevant governing instruments and applicable state law.[31] To the extent practicable, this information should be illustrated in a table.

d. *Changes in investment policies and business plan.* Critics have complained that the effects of changes in significant investment policies, such as permitting the reinvestment of proceeds received from asset sales or refinancings or permitting leverage, are not adequately described in roll-up disclosure documents. The new rules address this concern by requiring a description of each material change in the investment policies and business plans of the successor and the effects on investors of such changes.[32]

In many roll-up transactions, the sponsors state that in the future the successor may sell assets owned by the partnerships and purchase new assets with the proceeds. Such asset sales and purchases often are identified as a potential benefit of the roll-up transaction because they may result in growth of the assets of the partnership. However, disclosure documents for roll-up transactions frequently do not provide specific disclosure about such proposed sales and purchases.

Under the proposed rules, specific disclosure would be required about the plans of the sponsor (or other person that will control the successor) with respect to material asset sales or purchases, borrowings or other extraordinary transactions involving the assets and/or liabilities of the partnerships or the successor.[33] The proposed rules would require a statement as to whether or not specific assets have been identified for sale, financing, refinancing or purchase and, if so, a description of the proposed transaction.[34]

e. *Changes in limited partner cash distribution policies.* In order to enhance an investor's understanding of the effects of a roll-up, the proposed rules require a description of the cash distribution policies of the successor and a comparison of such policies to those of the partnerships to be rolled-up This description would cover cash distributions from operations and from capital transactions, such as sales or refinancings of properties.[35]

f. *Trading market discount of securities.* A principal concern raised by investors relates to the significant discount at which securities received in roll-up transactions trade in the secondary markets. The proposed rules would require the disclosure document to make clear the likelihood of such a discount. In addition, the effects on investors of this trading discount in relation to changes in the successor's cash distribution policies would be highlighted.[36] Comment is requested on whether disclosure of historical trading prices of securities issued in other roll-up transactions would provide helpful information or whether such information likely would confuse or mislead investors.

5. Background, Reasons and Alternatives

a. *Background of the partnerships.* In roll-up transactions that involve bringing together two or more partnerships, investors may have no previous knowledge of the other partnerships that are proposed to be joined with their partnership. In order to provide investors with a more complete understanding of the partnerships that might be included in the roll-up

[27] Proposed Item 904(c).

[28] Proposed Item 904(c). Compensation payable by the successor to a previously unaffiliated general partner would be included in the disclosure required by this proposed Item.

[29] Proposed Item 904(c). For example, if the sponsor would receive compensation from an asset sale only if made before a specified date, the sponsor's interest in selling the asset at a time that may not be in the best interests of the investors would be described.

[30] Proposed Item 904(c).

[31] Proposed Item 904(b).

[32] Proposed Item 904(e).

[33] Proposed Item 904(e). The disclosure required by this proposed Item is comparable to that required by Item 5 of Schedule 13E-3 (17 CFR 240.13e-100).

[34] Proposed Item 904(e).

[35] Proposed Item 904(d).

[36] Proposed Item 904(f).

transaction, the proposed rules require a brief description of the background of each of the partnerships.[37] For example, the disclosure document would provide information about the partnerships' original investment objective(s), the amount of capital raised from investors and whether all funds raised had been invested as originally planned. Further, the document would state for each partnership whether the partnership has achieved its original investment objective(s). Finally, disclosure regarding defaults on mortgage debt and property foreclosures would be required.

b. *Background of, reasons for and alternatives to the transaction.* Roll-up transactions may include significant benefits for the general partner or sponsor. Concerns have been raised that the disclosure provided may not enable investors to assess the reasons for the roll-up transaction or alternatives considered by the sponsor or available to investors. The proposed rules require more detailed disclosure of this background information.

First, the proposed rules require information about any discussions that the sponsor has had in the past two years with any other persons about an extraordinary transaction involving the partnerships.[38] This disclosure should assist investors in evaluating whether other opportunities that might have been beneficial to investors had been presented to the general partner or may otherwise be available. Comment is requested on whether the two year period should be longer, such as five years or shorter, such as one year.

Second, the proposed rules require the sponsor to explain its reasons for proposing the roll-up transaction generally, and, specifically, its reasons for choosing the particular structure of the transaction and the successor.[39] Under this disclosure item, information would be provided, for example, about why the transaction is structured as an exchange offer, merger or other transaction; why the successor is structured as a partnership, corporation or other entity; or why a holding company structure is used.[40] Disclosure of this type of information is intended to provide investors with a basis upon which to evaluate the sponsor's reasons for proposing and structuring the roll-up transaction. If the roll-up transaction is proposed by someone other than the general partner or its affiliates, the proposed rules require the general partner to state whether it recommends the transaction and its reasons therefor.[41] In this situation, the disclosure concerning the reasons for the structure of the transaction and the successor would be provided by the sponsor proposing the roll-up transaction.

Third, under the proposed rules, each alternative to the roll-up transaction would be described.[42] This disclosure would include a description of each alternative considered by the general partner and liquidation or continuation of the partnership even if not considered by the general partner. The general partner would be required to state why it rejected each alternative considered by it. If no consideration was given to liquidation or continuation of the partnership, the general partner would be required to explain why it did not consider those alternatives.

6. Fairness of the Roll-up Transaction

As previously discussed, a roll-up transaction often provides significant benefits to a general partner and/or sponsor. Since a general partner typically negotiates the transaction on behalf of itself as well as the limited partners, roll-ups give rise to serious conflicts between the interests of the general partner and those of investors. Investors in turn may find it difficult to evaluate whether the general partner has reasonably considered their interests. This difficulty may be more pronounced in multiple partnership roll-up transactions because the transaction may have different effects on investors in different partnerships or may be completed with many different combinations of partnerships.[43]

As more fully described below, the proposed rules address these concerns by requiring (i) a complete description of each potential conflict of interest presented by the roll-up transaction, (ii) a statement by the general partner as to whether or not it reasonably believes the roll-up transaction is fair or unfair to investors in each partnership, specifically addressing each possible combination of partnerships, and (iii) a discussion of the bases for the sponsor's beliefs, including a comparison of the roll-up transaction to alternatives.[44]

a. *Conflicts of interest.* With respect to conflicts of interest, the proposed rules require a description of the terms of the transaction that present a potential for a material conflict between the general partner's interests and the interests of investors.[45] Under this proposed rule, the disclosure would specifically describe the terms of the transaction that present the potential conflict and nature of the conflict.[46] Additionally, the disclosure document must include a description of the general partner's fiduciary duties and a statement as to whether the general partner reasonably believes it has satisfied such duties.

Second, the proposed rules require the general partner to state whether or not a representative has been retained to represent the investors in the negotiations of the roll-up transaction.[47] If no such representative has been engaged, a description of the reasons for not engaging such a representative and the risks to investors arising from such lack of representation would be called for. If a representative has been retained, the proposed rules require specific information about the representative's qualifications, the terms of its engagement, its experience in transactions similar to the roll-up transaction and its past dealings with the general partner, sponsor or their affiliates.[48] Finally, the proposed rules require the actions taken by the representative on behalf of investors in each of the partnerships to be described. Comment is requested on the adequacy of the proposed requirement to fully inform investors as to the potential

[37] Proposed Item 906 (b) and (c).

[38] Proposed Item 906(a). The disclosure required by this proposed Item would be comparable to that required by Item 3(a)(2) of Schedule 13E–3.

[39] Proposed Item 907.

[40] For example, if the sponsor considered the level of control granted to the general partner of a limited partnership under state law in deciding to structure the successor as a limited partnership, that should be noted in response to proposed Item 907.

[41] Proposed Item 907(a).

[42] Proposed Item 907 (b)(2) and (b)(3).

[43] Moreover, even though "fairness" opinions often are obtained from investment bankers in roll-up transactions, such opinions may not cover all possible combinations of partnerships. See section II.C.7. *infra* for a discussion of the disclosure required by proposed Item 910.

[44] Proposed Item 909.

[45] Proposed Item 908.

[46] For example, if the general partner will receive a cash payment as a result of the roll-up transaction that it would not receive without the roll-up transaction, the disclosure would identify the amount of the payment and indicate that the general partner has an interest in proposing the roll-up transaction because it will receive the cash payment only if the roll-up transaction is completed.

[47] Proposed Item 908(b)(1).

[48] The information required by proposed Item 908(b)(2) would be comparable to that required about third parties providing reports, opinions and appraisals under Item 9(b) (1)–(4) of Schedule 13E–3. However, the proposed Item requires specific additional information, such as: (i) A brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years; (ii) a statement as to whether or not investors were consulted in the selection of the representative; and (iii) a description of the terms of the engagement of the representative, including, but not limited to, who will be responsible for paying its fees and whether the fees are contingent upon the outcome of the roll-up transaction.

conflicts of interest. Commenters also should address whether there are additional or different requirements that should be included.

b. *Fairness.* The proposed rules require the general partner to state whether or not it reasonably believes the roll-up transaction is fair or unfair to investors in each partnership.[49] This requirement parallels the disclosure required by those engaging in going private transactions subject to Rule 13e–3. If the roll-up transaction may be completed with different combinations of partnerships, this statement would address the fairness or unfairness of the various possible combinations.

Second, the general partner would be required to discuss the weight given to specific terms of the roll-up transaction listed in the proposed rules as well as any other material terms of the transaction.[50] The specific terms required to be discussed would include: (i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction, (ii) the methods used to determine such consideration, and (iii) the compensation to be paid to the sponsor in the future.

Third, the general partner would be required to discuss the weight given in its determination to each alternative considered by it.[51] This proposed rule also specifically requires a comparison of the consideration to be received by investors in the roll-up transaction to the consideration that would be received by investors in each partnership as a result of a liquidation of the partnership. In addition, the proposed rule requires the general partner to discuss the weight given to continuing the partnership in its present form.

The comparisons required by the proposed rules may involve significant uncertainties with respect to both the value assigned to the consideration to be received in the roll-up transaction and the value that might be obtained pursuant to the various alternatives. Accordingly, the proposed rules require a discussion of any material uncertainties involved in the values used in the comparisons.[52] For example, if the securities received in the roll-up transaction may trade at a price substantially below the value assigned in the transaction, the disclosure would note this and indicate what value the general partner has assigned to the securities for purposes of the comparison.[53] Similarly, if the general partner based the possible liquidation value upon values assigned to the assets of the partnerships by appraisers, and the general partner believes that in a liquidation the assets would sell for substantially less than the appraised values, this should be disclosed.

The Commission is proposing the requirement to compare the consideration to be received in the roll-up transaction to the consideration that might be received pursuant to alternatives (particularly liquidation) in response to specific concerns raised by commenters. The Commission specifically requests comment as to whether such comparisons would provide helpful disclosure and whether any additional standards should govern such comparisons.[54] Commenters also should address whether a comparison of the exchange value, liquidation value and trading price may prove misleading or confusing. Comment also is requested on alternative valuation disclosure that should be required.

Fourth, under the proposed rules, the general partner would be required to state whether its beliefs as to the fairness of the roll-up transaction are based, in whole or in part, on any report, opinion or appraisal obtained from a third party.[55] If the general partner has relied on any of those documents, the proposed rules would call for a description of any material uncertainties known to the general partner which has affected or is reasonably likely to affect the conclusions in such reports, opinions or appraisals. For example, in a multiple partnership roll-up transaction, a "fairness" opinion obtained from an investment banker may not address the fairness of all possible combinations of partnerships or the fairness to investors in each partnership. If a general partner's beliefs as to fairness are based upon such an opinion, the disclosure under the proposed rules would specifically note those material items not addressed in the fairness opinion. Similarly, if appraisals of assets are relied on and the general partner is aware that the bases for the appraisals have changed materially subsequent to the date of the appraisals, the general partner would be required to describe such changes and their possible effects on the conclusions of the appraisers.[56]

7. Reports, Opinions and Appraisals

Under the current rules, information concerning reports, opinions and appraisals obtained from outside parties that are materially related to the roll-up transaction is not specifically required to be included in the disclosure document (except in certain "going private transactions")[57] unless the report, opinion or appraisal otherwise is referred to in the disclosure document.[58] If the disclosure document refers to such a report, opinion or appraisal, then specific information must be provided.[59]

In light of the concerns raised about a general partner's conflicts of interest and the valuation methods used in roll-up transactions, the proposed rules require the disclosure document for a roll-up transaction to identify each report, opinion or appraisal obtained from an outside party that is materially related to the transaction.[60] Such reports, opinions and appraisals would include those relied upon by the sponsor or others in the roll-up transaction, as well as any other material reports, opinions or appraisals not relied upon, such as reports prepared by investment bankers concerning alternatives to the roll-up transaction that were not pursued by the sponsor.

The proposed rules require specific information about the reports, opinions or appraisals. Such information generally would include that currently required for all reports, opinions or appraisals referenced in a disclosure document,[61] as well as specific additional information.

[49] Proposed Item 909 (a) and (b)(2).

[50] Instructions 3 and 4 to Proposed Item 909.

[51] Proposed Item 909(b)(1).

[52] Proposed Item 909(b).

[53] If the sponsor believes that the securities will trade at a substantial discount, the sponsor should consider whether it reasonably should use the value assigned to the securities in the roll-up transaction for purposes of comparing such value to the value that might be obtained from alternatives, or instead should use the expected discounted value of the securities for the comparison. If in that situation the sponsor does not use a discounted value, the effect of the likely discount on the comparison should be disclosed.

[54] As proposed, Item 909 does not mandate specific valuation methods. For example, liquidation value may be determined in any manner selected by the sponsor provided the method and any material uncertainties concerning the method are clearly explained.

[55] Proposed Item 909(e). All reports, opinion or appraisals obtained in connection with the roll-up transaction would be described in accordance with the disclosure requirements of proposed Item 910. See section II.C.7. *infra* for a discussion of the disclosures required by proposed Item 910.

[56] For example, in a real estate transaction, if market conditions in a relevant real estate market have changed since the date of the real estate appraisals in a manner that may affect the value of a property, proposed Item 909(e) would require disclosure of such changes and their possible effect on the appraised value of the relevant properties.

[57] See Item 9 of Schedule 13E–3.

[58] See Item 4(b) of Form S–4.

[59] *Id.*

[60] Proposed Item 910(a).

[61] Item 4(b) of Form S–4 requires registrants to furnish the information required by Item 9(b) (1) through (6) of Schedule 13E–3 with respect to all reports, opinions or appraisals referred to in the prospectus. Such information generally consists of: (i) The identity and qualifications of the outside

Continued

For fairness opinions, specific information would be required [62] as to whether or not the opinion addresses: (i) The fairness to investors in each partnership, and (ii) the fairness of each possible combination of partnerships. If all combinations of partnerships are not addressed in the fairness opinion, the proposed rules would require a list of all combinations that are not covered by the opinion. In addition, in that situation, the disclosure document would identify the person that determined which combinations would be considered and include a description of that person's reasons for the selection of combinations. When all combinations of partnerships are not covered by the fairness opinion, the proposed rules require a clear statement in the disclosure document to alert investors that if the roll-up transaction is completed with a combination of partnerships not covered by the opinion, no fairness opinion will apply to the roll-up transaction.

In order to assist investors in considering any fairness opinion obtained in the roll-up transaction, the proposed rules also require the sponsor or the general partner to describe any contacts with investment banks or financial advisers who declined to provide an opinion concerning the fairness of the roll-up transaction.[63] Such disclosure would include the identity of the firm, the actions taken by it, its conclusions and its reasons for not providing an opinion. Comment is requested on whether an exception to this disclosure requirement should be provided for such matters as preliminary contacts in connection with retaining a firm to provide a fairness opinion and, if so, the standards that would govern such an exception.

For appraisals of assets, the proposed rules [64] would require the following specific information:

- A description of the valuation approaches considered and used by the appraiser, and the reasons the particular valuation approaches were used;
- A tabular presentation of the value of each separately appraised asset under each valuation approach considered by the appraiser, identifying the appraised value assigned by the appraiser;
- An identification of all material assumptions used by the appraiser. If different assumptions were used for different assets, the differences would be identified and the reasons therefor described;
- The date as of which the appraisals were prepared, and a statement as to whether or not the appraisals will be updated in the event that there are material changes in the conditions upon which the appraisals were based or if the roll-up transaction is not completed a specified period of time; and
- If the appraisals will not be updated, a description of any events that have occurred or conditions that have changed that the sponsor reasonably believes may have caused a material change in the value of any of the assets since the date of the appraisals.

These proposed specific information requirements for appraisals are intended to provide investors all relevant information for purposes of evaluating the methods used and the conclusions reached by the appraisers. The Commission requests comment as to whether these or other specific information requirements would elicit useful information for investors.

Under the proposed rules, "summaries" of appraisals prepared by the appraisers would not be included in the disclosure document provided to investors.[65] Instead, the information required by the proposed rules is intended to include all relevant information ordinarily included in such summaries. Both the "summaries" and the complete appraisals would be filed as an exhibit with the Commission.

Finally, for all reports, opinions or appraisals described under the proposed rules, the general partner would be required to state in the disclosure document that upon request the general partner will promptly transmit the report, opinion or appraisal to a limited partner or his representative.[66] As proposed, these documents would be made available without charge to the investors. All such reports, opinions and appraisals used in a roll-up transaction registered under the Securities Act would be filed with the Commission as an exhibit.

8. Federal Income Tax Consequences

Roll-up transactions usually involve important federal income tax consequences for investors. The tax consequences arise both in connection with the roll-up transaction itself and in an ongoing investment in the successor. Moreover, in multiple partnership roll-up transactions, the tax consequences may be different for investors in the different partnerships. However, disclosure documents for roll-up transactions often include long, complex discussions of the potential tax consequences that may not be understandable for investors. Such discussions often consist of a repetition of the entire legal opinion provided by tax counsel.

In order to provide more useful disclosure for investors, the proposed rules would require a clear and concise summary description of each material federal income tax consequence of (i) the roll-up transaction for investors in each partnership and (ii) an investment in the successor.[67] If investors in any of the partnerships are expected to have materially different tax consequences, the differences would be noted briefly, and the investor would be referred to the individual partnership supplement for a complete description of the differences. To the extent that investors in one or more of the partnerships are expected to incur federal income tax liabilities as a result of the roll-up transaction, the amount of the expected liabilities for investors in each partnership would be set forth in a table.

Inclusion of the "long-form" tax opinion in the disclosure document would not be responsive to these disclosure requirements. Under the proposed approach, the roll-up document would include only a clear, concise and understandable description of the material federal income tax consequences. The "long-form" tax opinion would be filed as an exhibit to the registration statement and made available to investors upon request or included as an appendix to the prospectus. Comment is requested on whether there are alternative approaches that would provide investors with understandable tax disclosure.

9. Summary Information Concerning Partnership Properties

Partnerships involved in roll-up transactions ordinarily own one or more

party; (ii) the method of selection of the outside party; (iii) past or proposed relationships between the outside party and the sponsor and its affiliates; (iv) if the opinion relates to the fairness of the consideration, whether the issuer or affiliate determined the amount of the consideration, or whether the outside party recommended such amount; and (v) a summary of the report, opinion or appraisal including the procedures followed, the findings and recommendations, instructions received from the issuer or affiliate and any limitations imposed by the issuer or affiliate on the scope of the investigation.

[62] Proposed Item 910(b)(1).

[63] Proposed Item 910(e).

[64] Proposed Item 910(b)(2).

[65] See Instruction 3 to proposed Item 910. In roll-up transactions, "summaries" of the appraisals, which are prepared by the appraisers, often are included as an appendix to the disclosure document provided to investors. However, the summaries may not provide the sort of information about the appraisals (in a manner understandable for investors) that is helpful to an evaluation of the appraisals. The elimination of the "summaries" of the appraisals from the disclosure documents may reduce significantly the length of such documents.

[66] Proposed Item 910(d).

[67] Proposed Item 916. As stated in the Interpretive Release, if there are material federal income tax consequences with respect to which counsel is unable to opine, each such consequence must be prominently disclosed.

specific properties that comprise the material business of such partnerships. Under the current rules, disclosure documents for roll-up transactions are required to include specific detailed information concerning the properties owned by each of the partnerships.[68] In order to provide a more readable presentation of property information in roll-up transactions, the proposed rules require specific summary information concerning the properties and other assets owned by each partnership.[69] This information would be in addition to that otherwise required to be included or incorporated by reference in the registration statement.

The proposed item includes specific information requirements concerning properties owned by partnerships engaged in real estate or oil and gas operations. For example, for real estate partnerships, summary descriptions of each partnership's properties would include occupancy, lease and mortgage financing information. The summary information required for oil and gas partnerships would include such matters as a description of each property and the nature of the partnership's interest, productive wells expressed separately for oil and gas, and production history of the properties, including average sales prices and average production costs. For partnerships engaged in other businesses, information comparable to that proposed to be required for real estate or oil and gas partnerships would be required. Comment is requested concerning whether the summary information proposed to be required would be useful to investors in evaluating the properties owned by the partnerships subject to a roll-up. Commenters favoring other or additional summary information requirements should specifically describe the information that should be included.

10. Financial Information

Investors considering a roll-up transaction may have little, if any, information about other partnerships participating in the transaction. The proposed rules require that specified financial information, including financial statements of the successor, summary financial information for each partnership participating in the transaction, and pro forma financial information be provided to investors.[70]

Under existing requirements, the disclosure document must contain audited financial statements prepared in accordance with Regulation S–X.[71] The proposals do not change this requirement.

In addition to the usual selected financial data [72] for each partnership participating in the transaction, the proposed rule specifies other financial information that must be provided for each partnership. This information includes, among other items, net increase or decrease in cash and cash equivalents, net cash provided by operating activities, cash distributions; and per unit data for net income, book value, appraised value and distributions. Comment is requested on the specific disclosure items and whether there are additional items which should be required to be disclosed.

In addition to historical financial information, the rule sets forth two new pro forma financial information requirements. First, information would be provided under at least two different sets of assumptions: (i) Participation in the roll-up by all partnerships and (ii) participation in the roll-up by those partnerships that on a combined basis have the lowest combined net cash provided by operating activities [73] (called "worst case participation"). Second, a pro forma statement of cash flows would be required. After a roll-up, the value of the successor's securities is based on the trading market for securities of entities operating in the same industry. This value generally is based on a multiple of operating cash flow and a factor for the market's expectations of the likelihood of the continuation of that cash flow. Comment is requested on whether the proposed pro forma financial statements would provide useful information to investors in evaluating roll-ups.

11. Other Information

In addition to the proposed disclosure requirements discussed above, the proposed rules also would require more detailed disclosure regarding the expenses of the roll-up, including identifying the persons responsible for paying the expenses.[74] If the expenses are to be allocated among the partnerships subject to the transaction, additional disclosure about the allocation method will be required.

Disclosure regarding the sources and dollar amount of funds to finance the transaction will be required.[75] If the partnerships subject to the transaction will finance the roll-up, either with available cash, asset sales or mortgaging of assets, detailed disclosure will be required to fully inform investors of this fact.

III. Proposed Establishment of a Minimum Roll-Up Solicitation or Tender Offer Period

Questions have been raised as to whether the Commission's rules operate to deny limited partners sufficient time to fully consider the information provided in roll-up disclosure documents. A bill has been introduced in the U.S. House of Representatives that would fix a 60-day minimum period for roll-up related proxy and tender offer solicitations.[76] Congressional sponsors and other advocates of this initiative contend that general partners or their affiliates often file non-public preliminary proxy materials with the Commission before announcing to investors that a roll-up is contemplated. Investors complain that, once they do receive the frequently voluminous roll-up documents following staff review,[77] they have little or no opportunity to read and arrive at an understanding of the complex disclosure contained therein.[78]

In light of the importance of Congressional and investor concerns, the Commission is proposing to require that roll-up disclosure documents be distributed to investors at least 60 calendar days in advance of a meeting, or the earliest date of partnership action

[68] See General Instruction C.2. to Form S–4 and F–4.

[69] Proposed Item 914.

[70] Proposed Item 915

[71] 17 CFR part 210.

[72] See Item 301 of Regulation S–K (17 CFR 229.301).

[73] Cash flow data should be calculated based on the Statement of Cash Flows prepared in accordance with Financial Accounting Standard Board Statement of Financial Accounting Standards No. 95 Statement of Cash Flows.

[74] Proposed Item 912.

[75] Proposed Item 911.

[76] Section 2(a) of H.R. 1885, introduced April 17, 1991.

[77] Because roll-ups generally entail the issuance of a new security in connection with a merger or other business combination, registrants must comply with the registration provisions of the Securities Act as well as the proxy rules. Many registrants utilize a "wrap-around" procedure whereby a combined proxy statement/prospectus is filed in preliminary form on a non-public basis under Rule 14a–6(f) (17 CFR 240.14a–6(f)) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*), with the understanding that a registration statement will be filed, or "wrapped around," this document once staff review is completed. See Written Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Senate Subcommittee at 2–3, 32–33 (February 27, 1991).

[78] See, *e.g.*, Written Testimony of Richard G. Wollack, Chairman, Liquidity Fund, Inc., Before the House Subcommittee at 5–7 (October 3, 1990).

by consent.[79] If, under applicable state law, the maximum period permitted for giving notice is less than 60 calendar days, the state law maximum notice period would apply. A 60-calendar day offering period also is proposed with respect to a roll-up transaction structured as an exchange offer and subject to the tender offer regulatory provisions.

Whether or not investors have sufficient notice of an impending roll-up currently is a function of overlapping federal and state regulation of the solicitation process, with timing requirements dictated in the first instance by the states and, in some cases, by the markets. Roll-up proxy material generally is mailed to securityholders at least 20 days before the vote in accordance with the partnership agreement and any applicable state law governing notice of the meeting to which the proxy material relates.[80] Minimum time periods thus established vary, depending on the type of meeting called and the manner in which the proxy materials are transmitted.

Federal securities law also affects the length of the roll-up solicitation period. Under some circumstances, a combined proxy statement and prospectus must be mailed within a fixed number of days before the securityholders' meeting.[81] If the roll-up is a going private transaction under Rule 13e–3 under the Exchange Act, the disclosure documents must be mailed at least 20 calendar days before the vote is taken.[82] Comment is sought on whether a 60-day period is necessary or appropriate to enable limited partners to evaluate fully a roll-up transaction disclosure document in connection with both contested and uncontested roll-up solicitations. If commenters believe this period should be longer, such as 90 days, or shorter, such as 45 days, a clear and concise explanation should be provided. Comment also is requested on whether the minimum period should apply to the proxy statements of other persons and whether the minimum period should apply to additional solicitation materials.

[79] See proposed General Instruction I.2 to Form S–4, proposed General Instruction G.2 to Form F–4, proposed rule 14a–6(m), proposed rule 14c–2(c) and proposed revisions to rule 14e–1(a).

[80] See Written Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the House Subcommittee at 16 (April 23, 1991).

[81] See Instruction A.2 to Form S–4 (requiring such mailing at least 20 business days before the meeting where information regarding the successor or partnerships is incorporated in the combined proxy/prospectus by reference to other filings); Rule 14e–1(a) (17 CFR 240.14e–1(a)) (where a roll-up is effected by a tender offer subject to the Williams Act, the offer must remain open for a minimum of 20 business days); and Rule 14c–2(b) (17 CFR 240.14c–2(b)) (where action may be taken by consent and the issuer is not soliciting proxies, an information statement on Schedule 14C must be delivered no less than 20 calendar days before the vote).

[82] See Rule 13e–3(f).

IV. Cost-Benefit Analysis

While some additional costs to registrants may result from the proposals, such costs may be outweighed by the benefits resulting from the amended disclosure requirements which are intended to enhance the ability of securityholders to analyze limited partnership roll-up transactions. The proposals have been formulated against the template of evolving state partnership law and would not subject additional persons to filing requirements. To evaluate the benefits and costs associated with the proposed amendments of Forms S–4 and F–4, Rule 14a–6, Rule 14c–2 and Rule 14e–1, and proposed new subpart 900 of Regulation S–K, the Commission requests commenters to provide views and data as to the costs and benefits associated with amending the disclosure requirements.

V. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed subpart 900 of Regulation S–K and the amendments to Form S–4 and F–4 and Rules 14a–6, 14c–2 and 14e–1. The IRFA indicates that the proposed amendments and rules could impose some additional costs on small registrants, but would affect small registrants in the same manner as other registrants. The proposed amendments and rules, however, are designed to minimize these costs to the greatest extent possible while enhancing the ability of securityholders to analyze limited partnership roll-up transactions. A copy of the IRFA may be obtained from Michael L. Hermsen, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–6, Washington, D.C. 20549, (202) 272–2573.

VI. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rules that are the subject of this release, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals contained herein, are requested to do so. Commenters are requested to address both whether the proposals will enhance the quality and readability of roll-up disclosure documents in providing protection to investors and whether the proposals are practicable for registrants. The Commission further requests comment on any competitive burdens that might result from adoption of the proposed rules. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 19(a) of the Securities Act and section 23(a) of the Exchange Act.[83]

VII. Statutory Bases

The amendments to Regulation S–K and Forms S–4 and F–4 are being proposed pursuant to sections 6, 7, 8, 10 and 19 of the Securities Act of 1933, as amended (15 U.S.C. 77f, 77g, 77h, 77j, 77s).

The amendments to Rule 14a–6, Rule 14c–2 and Rule 14e–1 are being proposed pursuant to sections 14(a), 14(c), 14(e) and 23(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78n(a), 78n(c), 78n(e), 78w(a)).

List of Subjects in 17 CFR Parts 229, 239 and 240

Reporting and recordkeeping requirements, Securities.

VIII. Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K.

1. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending part 229 to add a new subpart 229.900 to read as follows:

Subpart 229.900—Roll-up Transactions

Sec.

[83] 15 U.S.C. 77s(a) and 15 U.S.C. 78w(a).

Sec.

Subpart 229.900—Roll-up Transactions

Notes: A. This subpart imposes disclosure requirements in addition to the disclosure requirements otherwise applicable to any filing with the Commission in connection with the transaction. To the extent that the disclosure requirements of this subpart are inconsistent with the disclosure requirements of any such forms or schedules, the requirements of this subpart are controlling.

B. If a material change occurs in the information required by this subpart prior to consummation of the transaction, the registrant shall file with the Commission in accordance with applicable rules and disseminate promptly disclosure of such change in a manner reasonably calculated to inform security holders of such change and to permit them to consider the information.

§ 229.901 (Item 901) Definitions.

For the purposes of this subpart 229.900:

(a) *General partner* means the person responsible under state law for managing or directing the management of the business and affairs of a partnership that is the subject of a roll-up transaction including, but not limited to, a general partner, board of directors, board of trustees, or other person having a fiduciary duty to such partnership.

(b) *Partnership* means any:

(1) Partnership;

(2) Trust;

(3) Real estate investment trust as defined in I.R.C. § 856; or

(4) Other similar entity that is not an association taxed as a corporation under subchapter C of the I.R.C.

(c) *Roll-up transaction* means any transaction or series of transactions that directly or indirectly involves the combination or reorganization of one or more partnerships into a new entity and either:

(1) The offer or sale of securities by the new or acquiring entity to one or more limited partners of the partnerships to be combined or reorganized; or

(2) The acquisition of the new or acquiring entity's securities by the partnerships being combined or reorganized.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction.

§ 229.902 (Item 902) Individual partnership supplements.

Notes: (1) If two or more partnerships are proposed to be included in the roll-up transaction, provide the information specified in this Item (§ 229.902) in a separate supplement to the disclosure document for each partnership. Such separate supplement shall be filed as part of the registration statement. Further, the separate supplement shall be attached to and delivered with the prospectus.

(2) The purpose of the separate supplement is to highlight in one place the important differences in the effects of the roll-up transaction for investors in the particular partnership. The supplement required by this Item (§ 229.902) should not include a summary of all important information about the roll-up transaction, which must be included in the principal disclosure document in response to Item 903 of this subpart (§ 229.903). In addition, notwithstanding the requirements of this Item (§ 229.902), the description of the effects of the roll-up transaction included in the principal disclosure document pursuant to Item 904 of this subpart (§ 229.904) must identify clearly any effects that may be different for investors in any of the partnerships proposed to be included in the roll-up transaction.

(a) The separate supplement required by this Item (§ 229.902), which shall be filed as part of the registration or proxy statement, shall include the following:

(1) A description of each material effect of the roll-up transaction, including federal income tax consequences, that may affect investors in the partnership differently from investors in other partnerships, with appropriate cross references to the discussion of effects of the roll-up transaction required in the principal disclosure document pursuant Items 904 and 916 of this subpart (§ 229.904 and § 229.916).

(2) A statement concerning whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in the partnership, with appropriate cross references to the discussion of the fairness of the roll-up transaction required in the principal disclosure document pursuant to Item 909 of this subpart (§ 229.909). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences should be described in the supplement.

(3) A narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include:

(i) The appraised value of each separately appraised asset held by the partnership, or, if no appraisals were obtained, the value assigned to each material asset for purposes of the valuation of the partnership;

(ii) Any liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by holders of interests in the partnership (on an equivalent interest basis, such as per $1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per $1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to the general partner for such general partnership interest.

(4) A description of any components of the calculation of the value of the partnership for purposes of allocating interests in the roll-up transaction that may be more or less favorable for investors in the partnership than for investors in other partnerships.

(5) The amounts of compensation paid to the general partner and its affiliates by the partnership for the last three fiscal years and the amounts that would have been paid if the compensation structure to be in effect after the roll-up transaction had been in effect during such period.

(6)(i) The "worst case" participation pro forma financial statements included in the principal disclosure document in response to Item 915(c)(ii) of this subpart (§ 229.915(c)(ii)), further adjusted to include the partnership, unless the partnership is included in

such financial statements. If the partnership is so included, briefly describe the contents of such statements and provide a cross reference to the appropriate section in the disclosure document.

(ii) A narrative discussion of the material items in such pro forma financial statements, addressing specifically any material changes to the pro forma financial statements resulting from the addition of the partnership to the combination of partnerships covered thereby.

(7) An appropriate cross reference to selected financial information concerning the partnership included in the principal disclosure document in response to Item 915 of this subpart (§ 229.915).

§ 229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§ 229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction;

(2) The material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor to investors in the partnerships;

(3) Whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in each partnership, including a brief discussion of the bases for such belief;

(4) Any opinion from an outside party concerning the fairness of the roll-up transaction, including whether the opinion addresses the fairness of all possible combinations of partnerships, and whether any outside party declined to provide an opinion concerning the fairness of the roll-up transaction;

(5) Any material effects of the roll-up transaction that may be different for investors in any of the partnerships;

(6) Alternatives to the roll-up transaction considered by the general partner, as well as the alternatives to liquidate or continue the partnerships whether or not considered by the general partner;

(7) Rights of investors to exercise dissenters' or appraisal rights or similar rights and to obtain a list of investors in the partnership in which the investor holds an interest; and

(8) If any affiliates of the general partner or the sponsor may participate in the business of the successor or receive compensation from the successor, an organizational chart showing the relationships between the general partner, the sponsor and their affiliates.

Instruction to Item 903. The description of the material risks of the roll-up transaction required by paragraph (b)(1) of this Item (§ 229.903) must be presented first in the summary.

§ 229.904 (Item 904) Effects of the roll-up transaction.

(a) *General requirements*—(1) *Brief description of effects.* Provide a brief description of each material effect of the roll-up transaction on investors in each partnership, including, but not limited to, the potential risks, adverse effects and benefits of the roll-up transaction for investors and for the general partner. State whether any of such effects may be different for investors in any partnership and, if so, identify the partnership(s) for which the effect may be different and describe such differences. Each effect shall be quantified to the extent practicable. Such description shall address all material effects of the roll-up transaction including, but not limited to, each of the effects described in response to paragraphs (b), (c), (d), (e) and (f) of this Item (§ 229.904), and shall be included in the forepart of the disclosure document immediately following the summary required pursuant to Item 903 of the subpart (§ 229.903).

(2) *Complete description of effects.* Provide a complete description of each material effect of the roll-up transaction under appropriate captions in the disclosure document. The effects required to be described include, but are not limited to, each of the items set forth in paragraphs (b), (c), (d), (e) and (f) of this Item (§ 229.904).

(b) *Changes in voting and other limited partner rights; changes in duties owed by the general partner.* (1) Describe each material difference in the voting and other rights of investors in each partnership subject to the transaction and the voting and other rights of investors in the successor under the partnerships' and the successor's governing instruments and under applicable law.

(2) Describe each material difference in the duties owed by the general partner in each partnership and the duties owed by the general partner of the successor to investors in the successor under the partnerships' and the successors' governing instruments and under applicable law.

(c) *Changes in general partner compensation and distribution arrangements.* (1)(i) Describe each item of compensation (including reimbursement of expenses) payable by the successor after the roll-up transaction to the general partner and its affiliates or to any affiliate of the successor. Compare such compensation to the compensation currently payable to the general partner and its affiliates by each partnership and describe the effects of the change(s) in compensation arrangements.

(ii) Describe each instance in which cash or other distributions may be made by the successor to the general partner and its affiliates or to any affiliate of the successor. Compare such distributions to the distributions currently paid or payable to the general partner and its affiliates by each partnership and describe the effects of the change(s) in distribution arrangements. If distributions similar to those currently paid or payable by any partnership to the general partner or its affiliates will not be made by the successor, state whether or not other compensation arrangements with the successor described in response to paragraph (c)(1)(i) of this Item (§ 229.904) (e.g., incentive fees payable upon sale of a property) will, in effect, replace such distributions.

(2) Describe the material conflicts that may arise between the interests of the sponsor or general partner and the interests of investors in the successor as a result of the compensation and distribution arrangements described in response to paragraph (c)(1) of this Item (§ 229.904) and describe any steps that will be taken to resolve any such conflicts.

(3) Provide a table demonstrating the changes in compensation and distributions setting forth among other things:

(i) The actual amounts of compensation and distributions paid by the partnerships on a combined basis to the general partner and its affiliates for the partnerships' last three fiscal years

and most recently ended interim periods; and

(ii) The amounts of compensation and distributions that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period.

(4) If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor from that shown in the table in response to paragraph (c)(3)(ii) of this Item (§ 229.904) (e.g., if properties will be sold after the roll-up transaction and no properties were sold during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(d) *Changes in limited partner cash distribution policies.* Describe any provisions in the governing instruments of the successor and any policies of the general partner of the successor relating to distributions to investors of cash from operations or from the sale, financing or refinancing of assets. Compare such provisions and policies to those of each of the partnerships and describe the effects of any change(s) in such provisions or policies.

(e) *Changes in investment policies and business plan.* (1) Describe each material investment policy of the successor. Compare such investment policies to the investment policies of each of the partnerships and describe the effects of any change(s) in such policies.

(2) Describe any plans of the general partner, sponsor or of any person who will be an affiliate of the successor with respect to:

(i) A sale of any material assets of the partnerships;

(ii) A purchase of any material assets;

(iii) Borrowings; and

(iv) Any extraordinary transaction involving the assets and/or liabilities of the partnerships or the successor.

(3)(i) State whether or not specific assets have been identified for sale, financing, refinancing or purchase following the roll-up transaction.

(ii) If specific assets have been so identified, describe the assets and the proposed transaction.

(f) *Trading market discount of securities.* (1) Describe the likelihood that securities of the successor received by investors in the roll-up transaction will trade in the securities markets at a price substantially below the value assigned to such securities in the roll-up transaction and the value of the assets of the successor.

(2) Describe the effects on investors of the trading market discount described in response to paragraph (f)(1) of this Item (§ 229.904), including the effect of such discount in relation to any change in the successor's investment policies to permit the reinvestment of proceeds from the sale of assets rather than distributing such proceeds to investors.

Instructions to Item 904. (1) The requirement to quantify the effects of the roll-up transaction shall include, but not be limited to:

(i) If cost savings resulting from combined administration of the partnerships is identified as a potential benefit of the roll-up transaction, the amount of cost savings and a comparison of such amount to the costs of the roll-up transaction; and

(ii) If there may be a material conflict of interest of the sponsor or general partner arising from its receipt of significant payments or other consideration as a result of the roll-up transaction, the amount of such payments and other consideration to be obtained in the roll-up transaction and a comparison of such amounts to the amounts to which the sponsor or general partner would be entitled without the roll-up transaction.

(2) To the extent practicable, the effects described in response to this Item (§ 229.904) should be illustrated in tables or other readily understandable forms. For example, the benefits to the general partner may be illustrated in a table that compares on a before and after basis, the fees and compensation payable to the sponsor or the general partner, the rights of investors to remove the sponsor or the general partner and the duties owed to investors by the sponsor or the general partner.

§ 229.905 (Item 905) Allocation of roll-up consideration.

(a) Describe in detail the method used to allocate interests in the successor to investors in the partnerships and the reasons why such method was used.

(b) Provide a table showing the calculation of the valuation of each partnership and the allocation of interests in the successor to investors. Such table shall include for each partnership:

(1) The value assigned to each significant type of asset of the partnership (e.g., real estate net of mortgage debt, cash and cash equivalents, and net other assets) and the total value assigned to the partnership;

(2) The total value assigned to all partnerships;

(3) The aggregate amount of interests in the successor to be allocated to each partnership and the percentage of the total amount of all such interests represented thereby; and

(4) The amount of interests of the successor to be issued to investors per interest held in each partnership (on an equivalent interest basis, such as per $1,000 invested).

(c) If interests in the successor will be allocated to the general partner in exchange for its general partner interest or otherwise or if the general partner will receive other consideration in connection with the roll-up transaction, describe in detail the method used to allocate interests in the successor to the general partner or to determine the amount of consideration payable to the general partner and the reasons such method(s) was used.

§ 229.906 (Item 906) Background of the roll-up transaction.

(a) Provide a summary of the background of the transaction. The summary should address those matters material to investors including a description of any contacts or negotiations that have occurred within the past two years between the general partner and any other person concerning the acquisition of interests in the partnerships (including, but not limited to, interests owned by the general partner or sponsor), a combination of the partnerships or any other extraordinary transaction involving the partnerships.

(b) Provide a brief description of the background of each partnership, including, but not limited to, the following:

(1) The extent to which net proceeds from the original offering of interests have been invested, including the amount not yet invested; and

(2) The partnership's investment objectives, and whether the partnership has achieved its investment objectives.

(c) Discuss whether the general partner (including any affiliated person materially dependent on the general partner's compensation arrangement with the partnership) or any partnership during the past 12 months has experienced or is likely to experience any material adverse financial developments. If so, describe such developments and the effect of the transaction on such matters.

§ 229.907 (Item 907) Reasons for and alternatives to the roll-up transaction.

(a)(1) Describe the reasons for proposing the roll-up transaction and whether the general partner initiated the roll-up transaction.

(2) State whether the general partner recommends the roll-up transaction, and briefly describe the reasons for such recommendation, if different from the reasons discussed in Item 909 of this subpart (§ 229.909).

(3) Describe the reasons for the structure of the transaction and for undertaking the transaction at this time.

(b)(1) Describe each alternative to the roll-up transaction considered by the sponsor or general partner and the reasons for proposing the roll-up transaction rather than any of the alternatives considered.

(2) If not described in response to paragraph (b)(1) of this Item (§ 229.907), describe the following potential alternatives to the roll-up transaction:

(i) Liquidation of the partnerships; and

(ii) Continuation of the partnerships.

(3) With respect to liquidation of the partnerships, describe the procedures required to accomplish liquidation, the effects of liquidation and the material risks and benefits that likely would arise in connection with liquidation.

(4) If the general partner did not consider liquidation or continuation of the partnerships as possible alternatives to the roll-up transaction, provide a statement to that effect and describe the reasons such alternatives were not considered.

§ 229.908 (Item 908) Conflicts of interests.

(a)(1) Describe the general partner's fiduciary duties to each partnership subject to the roll-up transaction and each actual or potential material conflict of interest between the general partner and the investors relating to the roll-up transaction.

(2) State whether the general partner reasonably believes it has satisfied such fiduciary duties.

(b)(1) State whether the general partner has retained any person to represent the investors in negotiating the terms of the roll-up transaction. If no such representative has been retained, describe the reasons therefor and any conflicts of interest and risks arising from the absence of separate representation.

(2) If a person has been retained to represent the investors, provide the following information:

(i) The name of the representative;

(ii) A brief description of the representative's qualifications, including a brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years;

(iii) A description of the method used to select the representative, including a statement as to whether or not any investors were consulted in the selection of the representative and, if so, the names of such investors;

(iv) A description of the scope and terms of the engagement of the representative, including, but not limited to, who will be responsible for paying the representative's fees and whether the fees are contingent upon the outcome of the roll-up transaction;

(v) A description of any material relationship that has existed within the past two years or is mutually understood to be contemplated between the representative and the general partner, sponsor, any affiliate of the general partner or sponsor, and any other person having a material interest in the roll-up transaction. If the relationship is with the general partner, sponsor, or any of their affiliates, describe any compensation received or to be received as a result of such relationship;

(vi) A description of actions taken by the representative on behalf of investors; and

(vii) A description of the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

§ 229.909 (Item 909) Fairness of the transaction.

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors.

(b) Provide a detailed discussion of the reasons for the general partner's belief disclosed in response to paragraph (a) of this Item (§ 229.909), and, to the extent practicable, the weight assigned to each such reason. This discussion must:

(1) Compare the roll-up transaction to each of the alternatives identified in response to Item 907 of this subpart (§ 229.907), including liquidation and continuation of the partnership; and

(2) Highlight any material differences among the partnerships (e.g., different types of assets or different investment objectives) relating to the fairness of the transaction.

(c) The belief stated in response to paragraph (a) of this Item (§ 229.909) must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, the belief stated in response to paragraph (a) of this Item (§ 229.909) must address each possible combination of partnerships.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§ 229.909) and the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§ 229.909) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 910 of this Subpart (§ 229.910). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 909. (1) Conclusory statements will not be considered sufficient disclosure in response to this Item (§ 229.909).

(2) Consideration should be given to presenting comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format.

(3) The reasons which are important in determining the fairness of a transaction to security holders and the weight, if any, which should be given to them in a particular context will vary. Such reasons will include, among others, whether the consideration offered to investors constitutes fair value in relation to:

(i) current market prices, if any;

(ii) historical market prices, if any;

(iii) going concern value;

(iv) liquidation value; and

(v) any report, opinion or appraisal described in Item 910 of this subpart (§ 229.910).

(4) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

(i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;

(ii) The methods used to determine such consideration; and

(iii) The compensation to be paid to the sponsor in the future.

§ 229.910 (Item 910) Reports, opinions and appraisals.

(a) *All material reports, opinions or appraisals.* Identify and summarize each report, opinion or appraisal from an outside party which is materially related to the roll-up transaction.

(b)(1) *Fairness opinions.* If the report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships;

(i) State whether or not the report, opinion or appraisal addresses the fairness of the roll-up transaction as a whole and to investors in each partnership;

(ii) State whether or not the report, opinion or appraisal addresses the fairness of all possible combinations of partnerships in the roll-up transaction. If

all possible combinations are not addressed:

(A) Identify the combinations that are not addressed;

(B) Identify the person that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(C) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(2) *Appraisals.* If the report, opinion or appraisal consists of an appraisal of the assets of the partnerships:

(i) Set forth in tabular form the appraised value of each asset separately appraised by the appraiser.

(ii) If the appraiser considered different valuation approaches in preparing its appraisals, briefly describe each of the valuation approaches and the reasons the particular valuation approach was selected. Set forth in tabular form the value of each asset under each valuation approach considered by the appraiser, identifying the valuation approach used by the appraiser in determining the appraised value.

(iii) Identify all material assumptions used by the appraiser in preparing the appraisals. If different assumptions were used for different assets, identify such differences and briefly describe the reasons therefor and the effects thereof.

(iv) Identify the date as of which the appraisals were prepared and state whether the appraisals will be updated in the event that there are material changes in the conditions upon which the appraisals were based and/or if the roll-up transaction is not completed within a specified period of time.

(v) Describe any events that have occurred or conditions that have changed since the date of the appraisals that may have caused a material change in the value of any of the assets appraised and the effects thereof.

(c) *All material reports, opinions or appraisals.* With respect to each report, opinion or appraisal identified in response to paragraph (a) of this Item (§ 229.910):

(i) Identify the person who prepared the report, opinion or appraisal;

(ii) Briefly describe the qualifications of such person;

(iii) Describe the method of selection of such person;

(iv) Describe any material relationships between:

(A) Such person and its affiliates, and

(B) The general partner, sponsor, the successor or any of their affiliates, which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship.

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or any of their affiliates determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(vi) Describe the procedures followed, the findings and recommendations, any instructions received from the general partner, the sponsor, the successor or any of their affiliates, and any limitation imposed by the general partner, the sponsor,the successor or any of their affiliates on the scope of the investigation.

(d) *All material reports, opinions or appraisals.* Provide a statement to the effect that upon receipt of a written or oral request a copy of any such report, opinion or appraisal shall be promptly transmitted without charge to each investor in a partnership subject to the transaction or a representative of such investor who has been so designated in writing. The statement also must include the name, address and telephone number of the person to whom investors should make their request.

(e)(1) *Fairness opinions.* Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction; provided, however, that no description is required pursuant to this paragraph of contacts with respect to opinions described in response to paragraph (b)(1) of this Item (§ 229.910(b)(1)).

(2) The description of contacts with any outside party required by paragraph (e)(1) of this Item (§ 229.910) shall include the following:

(i) The identity of each such party;

(ii) Any actions taken by such party in connection with its preparation of an opinion concerning the fairness of the roll-up transaction;

(iii) Any conclusions reached by such party concerning the fairness of the roll-up transaction; and

(iv) Any reasons such party did not render an opinion concerning the fairness of the roll-up transaction.

Instructions to Item 910. (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§ 229.910) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (c) of this Item (§ 229.910) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (b)(2) of this Item (§ 229.910). A clear and concise summary description of the appraisals is required.

§ 229.911 (Item 911) Source and amount of funds.

(a)(1) State the source and total amount of funds or other consideration to be used by the sponsor or successor in the transaction.

(2) If all or any of the consideration to be used by the sponsor or successor in the transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount; or

(3) If all or any of the consideration to be used by the sponsor or successor in the transaction is expected to be, directly or indirectly borrowed:

(i) Provide a summary of each loan agreement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions; and

(ii) Briefly describe any plans or arrangements to finance or repay such borrowings, or, if no plans or arrangements have been made, make a statement to that effect.

Instruction to Item 911. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Securities Exchange Act of 1934 and section 13(d) or 14(d) of the Securities Exchange Act of 1934 is applicable to the transaction, the name of such bank shall not be available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

§ 229.912 (Item 912) Transactional expenses.

Provide an itemized statement of all material expenses incurred or estimated to be incurred in connection with the transaction, including, but not limited to, filing fees, legal, financial advisory, accounting, and appraisal fees, solicitation expenses, and printing costs. Identify the persons responsible for paying any or all of such expenses. State whether or not any partnership subject to the transaction will be directly or indirectly responsible for any or all of such expenses, and, if so, whether the

partnership will be responsible whether or not it participates in the transaction. If more than one partnership is subject to the transaction, describe the method to be used in allocating the expenses among the partnerships.

§ 229.913 (Item 913) Other provisions of the transaction.

(a) State whether or not appraisal rights are provided under applicable state law or under the partnership's governing instruments or will be voluntarily accorded by the successor (or affiliated persons) or the general partner of the partnership (or any affiliate of the general partner) in connection with the transaction, and, if so, summarize such appraisal rights. If appraisal rights will not be available to objecting security holders, briefly describe any similar rights which may be available.

(b) If any provision has been made by the successor (or affiliated persons) or the general partner of the partnership (or any affiliate of the general partner) to allow security holders to obtain access to the books and records of the partnership or affiliate or to obtain counsel or appraisal services at the expense of the successor, the general partner, the partnership or any affiliate of such persons, describe such provision.

(c) Discuss the security holders' rights under federal and state law to obtain a partnership's list of security holders.

§ 229.914 (Item 914) Summary information concerning partnership properties and other assets.

(a) If any partnership is a real estate entity of the type described in General Instruction A to Form S–11 (17 CFR 239.18), provide summary information concerning each property owned by each such partnership, including, but not limited to, the following:

(1) A description of the property, including the date of construction and the date of any material improvements, and a description of any known environmental problems involving the property;

(2) The occupancy percentage as of the end of the most recently completed fiscal quarter;

(3) The identity of each tenant occupying more than ten percent of gross leasable area, the amount of area leased by each such tenant, the percentage of the total gross leasable area leased by each such tenant, the current base annual rent of each such tenant and the expiration date of the lease of each such tenant; and

(4) A description of any indebtedness to which the property is subject, including the interest rate, maturity date and principal balance as of the end of the most recently completed fiscal quarter.

(b) If any partnership is engaged in oil and gas operations as defined in Rule 4–10(a)(1) of Regulation S–X (17 CFR 210.4–10(a)(1)), provide summary information concerning the properties owned by each such partnership (and on a pro forma basis when appropriate) in accordance with Item 102 of Regulation S–K (§ 229.102) and data about its oil and gas operations in accordance with Industry Guide 2 (§ 229.801(b)) under the Securities Act of 1933, including, but not limited to, the following:

(1) A description of the partnership's property including its location and the nature of the partnership's interests.

(2) The total number of productive wells expressed separately for oil and gas (as gross and net oil wells and gross and net gas wells) and the total gross and net developed acreage assigned to productive sells. Undeveloped acreage owned, if any, should be described separately.

(3) The production history of the properties should be described including recent data on the average sales prices of oil and gas and the average production (lifting) costs per unit of production of the properties.

Note: Other information required by Industry Guide 2 (§ 229.801(b)), such as drilling activity, present activities, and delivery commitments should be provided where appropriate. Further, the exemption of limited partnerships from the provisions of Industry Guide 2, set out in the preamble to Guide 2, is inapplicable in the case of roll-up transactions or other business combinations.

(c) If any partnership is engaged in a business other than those described in paragraphs (a) and (b) of this Item (§ 229.914), provide summary information concerning each material asset of each such partnership comparable to that required by paragraphs (a) and (b) of this Item (§ 229.914).

§ 229.915 (Item 915) Pro forma financial statements; selected financial data.

(a) Include audited and interim financial statements of the successor meeting the requirements of Regulation S–X (17 CFR 210), as well as financial information prepared in accordance with Rule 3–05 (17 CFR 210.3–05) and Article 11 of Regulation S–X (17 CFR 210.11) with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(b) In addition to the information required by Item 301 Regulation S–K, Selected Financial Data (§ 229.301), and Item 302 of Regulation S–K, Supplementary Financial Information (§ 229.302), for each partnership participating in a roll-up transaction provide: Ratio of earnings to fixed charges, cash, assets at both book value and appraised value, other assets, other liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, appraised value, and distributions. Additional information should be provided if material to an understanding of each partnership participating in a roll-up transaction.

(c) Provide pro forma financial information (including oil and gas reserves and cash flow disclosure, if appropriate), assuming:

(1) All partnerships participate in the roll-up transaction; and

(2) "Worst case" participation as defined paragraph (d) of this Item (§ 229.915).

Such pro forma financial statements shall disclose the effect of the roll-up transaction on the successor's:

(i) Balance sheet as of the most recent fiscal year end and the latest interim balance sheet;

(ii) Statement of income (with separate line items to reflect income (loss) before and after the roll-up expenses and payments), earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

(iii) Statement of cash flows for the most recent fiscal year and the latest interim period; and

(iv) Book value per share as of the most recent fiscal year end and as of the latest interim balance sheet date.

(d) For purposes of this subpart (§ 229.900), the term "worst case" participation means the participation in a roll-up transaction of those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of such partnerships, *provided* participation by such partnerships satisfies any conditions to consummation of the roll-up transaction. If the combination of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate "worst case" participation pro forma financial statements are required.

Instruction to Item 915. Notwithstanding the provisions of this Item (§ 229.915), any or all of the information required by paragraph (c) of this Item (§ 229.915) that is not material

for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

§ 229.916 (Item 916) Federal income tax consequences.

(a) Provide a brief, clear and understandable summary of counsel's opinion of the material federal income tax consequences of the roll-up transaction and an investment in the successor. Such summary must address the consequences with respect to which counsel has opined, has not been asked to opine or is unable to opine. If any of the material federal income tax consequences are not expected to be the same for investors in all partnerships, the differences shall be noted, with a cross-reference to the description of such differences in the supplement required by Item 902 of this subpart (§ 229.902).

(b) State that the opinion of counsel has been filed with the Commission either as an appendix to the prospectus or as an exhibit to the registration statement. If filed as an exhibit to the registration statement, include a statement that the general partner or sponsor will provide upon written or oral request, without charge to each person to whom a prospectus is delivered, a copy of the opinion of counsel. The opinion of counsel may be provided to the representative of a security holder who has been so designated in writing.

(c) If investors in any partnership are expected to incur federal income tax liabilities as a result of the roll-up transaction, present in a table the amount of such expected liabilities for investors in each partnership (on an equivalent interest basis, such as per $1,000 invested).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted. * * *

§ 239.25 [Amended]

4. By amending Form S–4 (17 CFR 239.25) by adding General Instruction I to read as follows:

Note: Form S–4 does not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

I. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), the prospectus must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

§ 239.34 [Amended]

5. By amending Form F–4 (17 CFR 239.34) by adding General Instruction G to read as follows:

Note: Form F–4 does not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

G. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), the prospectus must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

7. By amending § 240.14a–6 (17 CFR 240.14a–6) by adding new paragraph (m) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(m) *Roll-up transactions.* If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S–K (17 CFR 229.901) must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

8. By amending § 240.14c–2 (17 CFR 240.14c–2) by adding new paragraph (c) to read as follows:

§ 240.14c–2 Distribution of information statement.

* * * * *

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the information statement must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

9. By amending § 240.14e–1 (17 CFR 240.14e–1) by revising paragraph (a) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and the securities being offered are registered on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

* * * * *

Dated: June 17, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14769 Filed 6–24–91; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 241

[Release Nos. 33-6900; 34-29314]

Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: The Commission today is announcing the publication of a release setting forth its views concerning existing disclosure requirements applicable to limited partnership roll-up transactions and initial public offerings of limited partnership units and other similar securities. These interpretations are necessary in order to address the concerns that have been expressed recently by investors, Congress and other interested parties. The intended effect of this release is that registrants will provide investors with clear, concise and understandable disclosure of material information about these transactions and offerings.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michael L. Hermsen, Amy S. Bowerman, or Meredith B. Cross at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Serious concerns have been expressed about the complexity and length of prospectuses, proxy statements and other disclosure documents used in connection with roll-ups of limited partnerships. This interpretive release addresses the application of current requirements to roll-ups and offerings of limited partnership interests and the companion release proposes rule revisions.[1] Together, these releases are intended to improve the overall quality and readability of disclosure documents used in roll-up transactions. This release also sets forth the Commission's views on the application of existing disclosure requirements to initial offerings of limited partnership interests. This release emphasizes the risks of investing in a limited partnership and the restrictions that state partnership laws and limited partnership agreements place on investor rights in an effort to assure that investors are apprised of the risks and limited rights often associated with an investment in a limited partnership. Finally, this release sets forth the Commission's views as to the application of disclosure requirements to registration statements of real estate investment trusts as well as non-real estate limited partnership offerings.

I. Background

Since January 1, 1985, 68 roll-ups involving two or more entities have been registered with the Commission. These roll-ups have involved approximately 1,800 entities, 1.2 million investors and an aggregate exchange value of $7.1 billion.

In a roll-up transaction, a sponsor consolidates two or more public or private limited partnerships or other pass-through investment vehicles into a single entity, or reorganizes a single partnership. In most cases, the roll-up transaction results in a conversion of a limited partner's interest from a finite-life to an infinite-life interest.

While roll-up transactions can be structured in different ways, these transactions typically are accomplished through a merger of the existing entities into a successor entity.[2] Investors in the existing entities receive an interest, usually equity, in the successor entity. The successor generally is either a newly formed corporation or limited partnership. Before a sponsor may proceed with a roll-up/merger, it must receive approval of the transaction from a requisite number of limited partners in each limited partnership, most often the holders of a majority of the outstanding limited partnership interests. Whereas the securities of the existing entities for the most part are thinly traded in the pink sheet secondary markets or not traded at all, the securities of the successor entity often are listed on the New York Stock Exchange, the American Stock Exchange or traded on the National Association of Securities Dealers' ("NASD's") Automated Quotation system.

Roll-ups have created considerable controversy and have generated a variety of criticisms, many of which were highlighted in a series of Congressional hearings on limited partnership roll-ups. Criticisms have focused primarily on issues relating to the fairness of the transactions and the general partners' conflicts of interest, as well as the inadequacy of the disclosure. The fairness of the methods used to value the securities issuable in exchange for investors' limited partnership interests has been questioned. Another area of concern has been the significant discount at which the price of the security received in the roll-up trades in the secondary market.

Serious issues have been raised with respect to general partners' fiduciary duties to the limited partners, including their potential conflicts of interest and lack of independence in structuring and negotiating the terms of a transaction. Critics have questioned the potential overreaching by the general partners inherent in the increased benefits, in terms of compensation, ownership interests and dilution of investors' voting rights, accruing to them in most roll-up transactions. These increased benefits typically include payments for general partnership interests and changes in compensation arrangements.

Additional complaints have been raised with respect to fundamental changes that a roll-up may bring about in the future operations of the successor entity. These changes frequently relate to the entity's borrowing policies, business plan, investment objectives, intended term of existence and voting rights of investors. Limited partners objecting to a roll-up transaction have especially criticized the absence of any legal or equitable alternative to the transaction. The "cram down" effect on objecting partners is perceived as unfair.

Investors may have acquired limited partnership interests for several reasons. A principal reason may have been the expectation of the pass-through of tax benefits,[3] accompanied by the safety of limited liability. When a roll-up is proposed, investors, despite the disclosures in the original offering document, have been surprised to discover how limited their rights are under state laws and the partnership agreements. Many of the state law protections afforded corporate shareholders are not provided to limited partners.

[1] The companion release publishes for comment proposed rules applicable to limited partnership roll-up transactions and is being issued concurrently by the Commission. See Securities Act Release No. 33-6899 (June 17, 1991).

[2] A roll-up may also be effected through an exchange offer. Unlike a merger, an exchange offer will not compel a limited partner to give up his original investment, even if a majority of the other limited partners in the partnership choose to participate in the roll-up. Approximately 11% of the roll-ups have been conducted as exchange offers, less so in more recent years.

[3] Prior to major revisions to the federal tax code beginning in 1984, limited partnerships afforded individual investors the opportunity to invest and to receive substantially the same tax treatment and cash distributions as a direct investment in the asset itself would have provided.

Various changes in the tax code since 1984 have reduced or eliminated the tax shelter and other tax benefits of an investment in a limited partnership. At the same time, industries that have principally relied on the partnership format for raising capital, such as oil and gas and real estate, have suffered substantially. As a result, many limited partnership interests have lost much of their value.

Investors also have complained about the comprehensibility and sufficiency of the disclosure provided in connection with roll-ups. The Commission has undertaken three initiatives to address the perceived problems. First, the Division of Corporation Finance ("Division") has incorporated into its review and comment process a number of disclosure suggestions made by commenters and participants in these transactions.[4]

Second, the Commission is, in this release, setting forth its views of existing disclosure requirements applicable to limited partnership roll-up transactions and initial public offerings of limited partnership units. This release is intended to assist registrants in assuring that investors are provided clear, concise and understandable disclosure about these transactions and offerings.

Third, the Commission is proposing amendments to its rules to enhance the clarity, as well as the substance, of the disclosures provided to investors in connection with roll-ups. The Commission also is reviewing its requirements applicable to partnership offerings to assess the need for any amendments.

The NASD recently has proposed to amend its rules to prohibit member brokers and investment advisers from receiving differential compensation in connection with roll-up transactions.[5] Pending public comment on and Commission approval of the NASD's proposed rule change, prominent disclosure is required of such arrangements, as well as the potential conflicts of interest inherent in this fee structure.[6]

[4] In December 1989, one participant, Liquidity Fund, provided to the staff a number of helpful suggestions to provide clearer disclosures about the material effects to investors that will result if the transaction is approved. These suggestions focused on the disclosure of the material differences in the legal rights, obligations and duties of the parties to the roll-up and the impact of the changes in investment objectives on the limited partners.

[5] Securities Exchange Act Release No. 29228 (May 23, 1991), 56 FR 24436 (May 30, 1991). The comment period ends June 14, 1991.

[6] Recommendations by broker-dealers to their customers in connection with securities to be issued in roll-up transactions also have raised concerns involving customer suitability. The receipt of fees tied to the number of "yes" votes obtained may conflict with the duty of broker-dealers, in recommending to customers the purchase, sale, or exchange of securities, to have a reasonable basis to believe that the recommendation is suitable for each customer based on his or her security holdings and financial situation and needs. (See NASD Rules of Fair Practice, Art. III, Section 2, NASD Manual (CCH) ¶2152). Moreover, a broker-dealer's failure specifically to disclose to customers the existence of this conflict may violate the general antifraud provisions of the federal securities laws, particularly where the firm has a preexisting customer relationship with the investors it solicits.

II. Interpretive Guidance

A. Presentation of Information

1. Readability

The primary purpose of the disclosure requirements of the federal securities laws is to provide the investing public with clear, comprehensible and complete information regarding the issuer, security, offering transaction and the risks of the investment. In view of the complexity of roll-up transactions and the risks of a limited partnership investment, meticulous care should be taken to assure that investors are provided with clear, concise and understandable disclosure as required by the rules of the Commission.[7] Legalistic, overly complex presentation and inattention to understandability often make the substance of the disclosure difficult to understand. Further, documents frequently contain vague "boiler plate" explanations that are imprecise and readily subject to differing interpretations. Disclosure of complex matters, such as compensation arrangements and partnership distributions, frequently is copied directly from the partnership and other agreements without any clear and concise explanation of the provisions. Disclosures are often repeated in different sections of the document. Such repetition often increases the sheer size of the prospectus, overwhelming the reader, without enhancing the quality of the information.

While these problems are troublesome in connection with any disclosure document, they are particularly acute in offerings directed primarily towards retail investors. Registrants are advised that where partnership and roll-up transactions are filed and they have not undertaken to present the required information in a clear, comprehensible manner, the staff will advise the registrant that the document cannot be processed until it is so written.

To address these problems, registrants are reminded that information should be presented in clear, concise paragraphs and sentences. To the extent practicable, information should be presented in short explanatory sentences and "bullet" lists.

[7] See Rule 421 of Regulation C (17 CFR 230.421). Registrants also are reminded that effectiveness of a registration statement may be denied or a stop order issued when there has not been a bona fide effort to present information in a reasonably clear, concise and readable manner. See Rule 461(b)(1) of Regulation C (17 CFR 230.461(b)(1)); see also, In the Matter of Franchard Corporation, 42 S.E.C. 163 (1964).

Consistent with existing requirements, important terms should be defined in a glossary section located in the back of the prospectus. Frequent reliance on defined terms as a primary means of explaining information in the body of the prospectus should be avoided. Rather, defined terms should be used in conjunction with a simple and clearly understandable textual description of their meaning in order for the reader to easily grasp the information being conveyed. For example, when the defined term Net Cash from Operations is used in a prospectus, it should be accompanied by a simple explanation such as "which is defined in the Partnership Agreement to mean generally the partnership's cash flow from operations." This allows the detailed definition to remain in the glossary but provides sufficient information for a reader to more easily understand the disclosure being presented.

Legal and business terminology should be avoided. Registrants should not presume that the investor understands the import of terms such as "best-efforts," "minimum-maximum offering," "dissenters' or appraisal rights." These terms, when used, should be clearly explained.

2. Captions and Headings

Caption and subheading titles should be descriptive of the substance of the disclosure included in the section.[8] For example, the title of the risk factor discussing the limited market for the securities should reflect the lack of liquidity or the inability to resell, rather than simply being titled Liquidity or Secondary Market.

3. Format of Prospectus [9]

There should be a uniform and systematic structure to a prospectus. The headings used in the summary section should correspond to the headings of the various sections in the body of the prospectus. The table of contents should contain these major headings as well as subheadings.

a. *Cover Page.*[10] Prospectus cover pages now contain significant amounts

[8] See Rule 421(b) of Regulation C (17 CFR 230.421(b)).

[9] See Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[10] See Item 501(c) of Regulation S-K (17 CFR 229.501(c)), Item 1 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 1 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

of text that result in obscuring the information intended to be highlighted by being placed on the cover page. As a result, it has become difficult to understand at the outset what the offering or transaction is about.[11] The cover page should be in plain English and contain a brief description of the purpose of the offering or the transaction. The most significant adverse effects should be highlighted through the use of a concise list of bullet-type statements. For example, in the case of an offering that presented risks because of a lack of control, substantial fees, leverage, limited voting rights, lack of a secondary market and lack of diversification, the cover page could include a list indicating:

- Total Reliance on General Partner
- Authorization of Substantial Fees to the General Partner and its Affiliates
- Leverage
- Limited Voting Rights of Investors
- Inability to Resell or Dispose of the Units Except at a Substantial Discount From the Per Unit Price
- Lack of Asset Diversification

A practice has developed in limited partnership offerings of setting arbitrary offering amount goals that bear no relationship to the number of securities that ultimately will be sold. Specifically, an offering frequently has a very low minimum goal to break escrow and two significantly higher maximum amounts. This practice may cause confusion in evaluating the current offering and the success of the sponsor's prior offerings. Therefore, the offering terms should refer only to the minimum amount to break escrow and the maximum amount to be offered.

In addition, prospective investors may not fully appreciate the different investment risks that will result from the amount actually raised. Therefore, the offering amount set forth on the top of the cover page should be the minimum amount needed to break escrow. The risk factor disclosure also should be based on the minimum amount. If the minimum amount is met and escrow is broken, the offering amount and other disclosures should be updated to reflect any material changes including investment and business risks that are presented by the offering at that point in time. This will enable an investor to appreciate fully the nature of an investment in the particular partnership at the time that his or her investment decision is made.

b. Table of Contents. A "reasonably detailed table of contents" with specific page references is currently required in all prospectuses.[12] The headings that appear in the table of contents should be consistent and correspond to those used in the body of the prospectus. The table of contents should follow the cover page of the prospectus.

c. Summary.[13] In light of the complex nature of disclosure documents for roll-up transactions and limited partnership offerings, a summary is required.

The summary section should provide investors with a clear, concise and coherent "snapshot" description of the most significant aspects of a roll-up transaction or a partnership offering. However, more often than not, summaries randomly repeat the text of prospectuses. This protracted and confusing structure fails to provide the intended brief overview of the salient aspects of the transaction.

The information that should be included in the summary will vary with each transaction or offering. Issuers should carefully consider and identify the aspects of an offering that are the most significant and determine how best to highlight those points in a clear, concise and understandable manner. The summary for a roll-up transaction generally should include: the name and a description of the entities proposed to be included in the roll-up transaction; a brief description of the roll-up transaction; investor voting rights and the most significant changes in the voting rights, such as the addition of a supermajority provision to remove the general partner; changes in the business plan, the form of ownership interest or management compensation; the general partner's conflicts of interest; the likelihood that the securities received in the roll-up transaction will trade at a substantial discount to the exchange value; the material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor; dissenters' or appraisal rights; investor rights to a limited partner list; any report, opinion or appraisal referred to in the prospectus; the background and reasons for the transaction; risk factors and adverse effects of the roll-up transaction; and, intended benefits of the roll-up transaction. While readers should be cross referenced to the more detailed discussion on the matters covered in the summary, cross references without a short descriptive discussion of the matter should be avoided.

d. Risk Factors.[14] The discussion of investment and business risks associated with the roll-up transaction or limited partnership offering should be short and concise and organized in a careful and logical fashion. Risks of a similar nature should be grouped together so they may be understood in context. For example, risks associated with the business in which the partnership intends to engage should be discussed together. These risks would include, if applicable, risks associated with particular properties, the lack of regulatory approval and the existence of environmental problems. Likewise, investment risks generally should be grouped. These risks would include, if applicable, the lack of liquidity of an investment, limitations on the rights of the limited partners and an enumeration of the rights of the general partner. The risks should be explained clearly, and where one risk is heightened by the nature of the investment, this should be clearly stated. For example, in an initial offering of limited partnership interests where there is not expected to be a liquid secondary market, and where the limited partners may be bound by a vote of a majority of other partners to a substantially changed investment (through merger, the partnership agreement or in other ways), that should be disclosed. In the case of a roll-up that increases the vote necessary to remove the general partner, and thereby substantially changes the business plan of the entity or permits the general partner wide discretion in selecting properties and taking on leverage, clear disclosures should be provided of the enhanced risks introduced by the broader discretion given to the general partner and the reduced ability to remove the general partner.

The risks should appear in order of their materiality to an investor. The most significant risks may warrant bullet disclosure on the cover page of the prospectus. While readers should be cross referenced to the more detailed discussion on the matters determined to be risks, cross references without a short description of the risks should be avoided.

[11] Industry Guide 4 requires specific information to be included on the cover page of a prospectus relating to the offering of interests in oil and gas programs. This release is not meant to change the disclosure requirements as they relate to these offerings. Rather, it is intended to enhance the requirements by providing guidance concerning the presentation of information on the cover page and in the prospectus.

[12] Item 502(g) of Regulation S–K (17 CFR 229.502(g)).

[13] See Item 503(a) of Regulation S–K (17 CFR 229.503(a)) and Item 3 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)).

[14] See Item 503(c) of Regulation S–K (17 CFR 229.503(c)) and Item 7 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 2 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

In a roll-up transaction, the risks posed by the particular transaction generally should be discussed before the risks that are inherent in an investment in a partnership or other generic risks.

e. Income Tax Considerations.[15] The use of a long form tax opinion filed as an exhibit to the registration statement is encouraged. Whether a long form opinion is filed as an exhibit or is included as an appendix, the prospectus should prominently set forth a brief, clear and understandable summary of the material income tax aspects of the roll-up transaction or partnership offering. This section should disclose the material tax aspects upon which counsel is unable to opine. Where counsel is unable to opine on material tax aspects, the prospectus should include a risk factor. If a roll-up transaction is taxable to an investor, risk factor treatment should be afforded.

f. *Prior Performance.*[16] In an initial offering of limited partnership units, the sponsor must provide prior performance information in a narrative and tabular format. The sponsor must present this information in a clear and concise format easily understood by the intended reader. This information must accurately reflect the general partner's ability to offer and manage this program.

In preparing a prospectus, a sponsor should not take line headings from the guide if they are inapplicable or do not accurately reflect the nature of the information. Line entries that are not self-explanatory should be clarified. For example, use of the caption "other" is inappropriate if the entry consists of only a single category of information. When possible, the table should use more descriptive headings (*i.e.*, return of capital). Also, if the line item contains more than one category of information, the presentation should be broken down into various components to the extent material.

B. Quality of Disclosure

The following discussion sets forth the Commission's interpretive views of existing substantive disclosure requirements. The discussion separately presents interpretive views that are applicable to roll-up transactions, interpretive views applicable to both roll-up transactions and limited partnership offerings and interpretive views applicable solely to limited partnerships offerings. These interpretations are intended to result in a clearer presentation of the benefits and detriments of a roll-up transaction or an investment in a particular limited partnership. In each instance, the items may be of such material significance to an investment decision as to warrant summary treatment in the forepart of the prospectus.

1. Roll-Up Transactions

a. *Effects on Different Partnerships.*[17] Roll-up transactions frequently involve combining two or more partnerships that may be affected quite differently by the transaction. Investors in each partnership must be provided information from which to evaluate the potential risks, adverse effects and merits of the roll-up transaction for their particular partnership interests. This disclosure should highlight the materially different effects for their partnership vis-a-vis the other entities involved. Disclosure of different effects should not be "buried" in parenthetical references. For example, it would not be considered adequate to describe a benefit in the following format: "Investors in the partnerships (except Partnership A) should benefit from the ability to sell their interests." When different effects are noted, the name of each partnership that may experience the effect should be included.

b. *Effects of Participation in a Roll-Up by Less Than All Partnerships.*[18] Another feature of roll-up transactions is that, even if one or more partnerships do not consent, the transactions often may be completed with the partnerships that do consent. In a transaction in which numerous partnerships are asked to participate, it is possible that the successor may be formed through many different combinations of partnerships. This creates serious uncertainties about the possible business prospects and financial condition of the successor. In that situation, these uncertainties about the effects of the roll-up transaction should be addressed in the disclosure document.

In addition, if a "fairness opinion" is obtained, the description of the opinion should make clear what partnership combinations it addresses. The description also should disclose whether the opinion addresses whether the transaction is fair to investors in each of the partnerships and, if it does not, why not. If (i) no fairness opinion is obtained, (ii) the fairness opinion does not address all possible combinations, or (iii) the fairness opinion does not reach the fairness of the transaction to the limited partners of each partnership, clear and prominent disclosure of the lack of a fairness opinion on all, or a part, of the transactions in question should be made. Particularly in the case where a fairness opinion on some part of the transaction is obtained, the disclosure should be clear as to those aspects of the transaction, and those partnership interests not covered by the fairness opinion.

c. *Allocation of Interests in the Successor.*[19] A roll-up transaction includes the issuance of interests in the successor to the limited partners and general partner of the partnerships. Accordingly, the method used to allocate the interests is a critical term of the transaction and must be thoroughly explained and illustrated in an understandable manner. This disclosure should include the reasons why this method was selected, what other methods were considered, why they were rejected and a complete description of how assets of the partnerships and the interests of the general partner were valued for purposes of the allocation, including any material assumptions, limitations or qualifications. For example, if the general partner will receive interests in the successor in exchange for previously "subordinated" rights to payments from the partnerships, the method used to determine the value of such rights should be explained. If the method differs among partnerships, the reason and effects of the method used to allocate interests in the successor on the different partnerships also should be highlighted and described.

d. Trading Market. In light of the history of a substantial difference between trading value of the securities issued in roll-up transactions and the exchange value, roll-up transaction disclosure documents should include prominent disclosure of the likelihood that the securities will trade at a price substantially below the value assigned in the transaction. This information should be presented on the cover page and in the risk factors section. The effect on the trading price of the payment of previously subordinated fees or expenses to the general partner should also be discussed. Other factors, such as the successor entity's cash distribution policy, that likely will affect the trading price should be discussed as well.

[15] See Item 4(a)(6) to Form S-4 (17 CFR 239.25), Item 12 and Appendix I to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 14 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[16] See Item 8 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 13 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[17] See Item 4 to Form S-4 [17 CFR 239.25].

[18] See Item 4 to Form S-4 [17 CFR 239.25].

[19] *Id.*

e. Reports, Opinions and Appraisals.[20] If a report, opinion or appraisal is referred to in a roll-up proxy statement/prospectus, Form S–4 requires that the information requested by Item 9(b) (1) through (6) of Schedule 13E–3 be provided. Also, the complete, and not summary, report, opinion or appraisal must be filed as an exhibit to the registration statement.

If a negative opinion was rendered by an investment banker or financial advisor concerning the fairness of the roll-up, or an investment banker or financial advisor refused to render a favorable opinion, this must be disclosed. Failure to provide adequate disclosure of this information would constitute a material omission under the anti-fraud provisions of the securities laws.[21]

2. Roll-Up Transactions and Limited Partnership Offerings

a. Application of Guide 5.[22] While Industry Guide 5 ("Guide") by its terms applies only to the "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," the requirements contained in the Guide should be considered, as appropriate, in the preparation of registration statements for real estate investment trusts and for all other limited partnership offerings. The Guide addresses disclosure concerns that are applicable to all offerings of limited partnership units, e.g., conflicts of interest, risk factors, compensation and summary of limited partnership agreement.

The requirements contained in the Guide that are relevant to all limited partnership offerings also should be considered, as appropriate, in the preparation of disclosure documents for roll-up transactions. Many of the disclosure concerns, such as conflicts of interest, investment objectives and fiduciary responsibilities, are pertinent to roll-up transactions.

b. Compensation to General Partner and its Affiliates.[23] The description of compensation and fee arrangements in primary offerings by limited partnerships frequently is complicated and obscure. The use of tables as a means of simplifying the disclosure is encouraged. The description of compensation arrangements between the partnership, general partner and its affiliates should give investors a clear understanding of the nature and amount of compensation that may be paid. Commonly, there are categories of compensation to be earned by the general partner. The disclosure document should make clear the distinctions among categories, including the level of potential compensation. The extent to which a general partner may affect the nature of the compensation by undertaking different transactions should be made clear. For example, a general partner might receive a given percentage of operating income (i.e., from rents, etc.) and a different percentage for sales of properties or refinancings. The distinction should be made clear, as well as the potential for the general partner to affect the categories of compensation. Both a narrative and tabular presentation of this information is recommended.

In the narrative presentation, the maximum amount that may be paid in each category of fees or compensation should be prominently disclosed. The tabular numeric presentation of this information should be based on this maximum amount.

Where an issuer states that there are ceilings on certain categories of fees or expenses, the issuer should also state whether the fees or expenses may be recovered by reclassifying them under a different category.

In addition, in a roll-up transaction, the issuer should compare the nature and level of compensation to be paid by the new entity to that paid by the old. To provide for clearer disclosure, registrants should present changes in the structure of fees and other compensation payable to the general partner in a tabular format, and should include specific quantification of such changes, where practicable. Further, the disclosure documents should include textual and numerical disclosure of the fees and other expenses payable to the general partner, affiliates and others solely because of the roll-up transaction.

A pro forma presentation of the compensation and fees proposed to be paid in the new entity should be presented using the historical pro forma financial statements. Where changes in the business plan may result in higher compensation than that shown in the pro forma presentation based on historical activities, the disclosure should address the potential for greater fees than shown in the pro formas and outline the potential differences. Where a compensation ceiling is fixed for a specified time period, the issuer also should set forth a pro forma presentation of the compensation and fees without giving effect to the ceiling.

c. Conflicts of Interest.[24] Many of these transactions or offerings are complicated by the number of affiliated entities involved in the transaction or in the business operations of the entities. Where affiliates of the general partner may participate in the offering or the issuer's business activities, an organizational chart showing the relationship between the general partner and its affiliates in the forepart of the prospectus should facilitate investor understanding of the relationships among such entities.

Registrants should describe concisely the potential conflicts of interest that are present and should identify clearly the transactions and relationships that give rise to such conflicts. The description should address the benefits and detriments that may be realized by the limited partners, the general partner and its affiliates, and any other parties that are subject to a conflict. A description of the procedures used or to be used to minimize the potential conflicts should be provided.

d. Fiduciary Responsibility of the General Partner.[25] Prospectuses are required to identify and explain the nature of the general partner's fiduciary duties to the limited partners. Where the partnership agreement modifies the state-law fiduciary duty standards, the registration statement should compare the state-law fiduciary duty standards with the standards as modified by the partnership agreement. The disclosure also should address the reasons for modifying the duties and the specific benefits and detriments to both the general partner and limited partners from each modification. A tabular presentation of this information should facilitate investor understanding.

A clear description of the limited partners' legal rights and remedies should be provided. Similarly, a clear explanation of defenses available to the general partner, such as the business judgment rule, also should be set forth.

In a roll-up transaction, the issuer also should provide a comparison of the general partner's fiduciary duty standards in the new entity to those in the existing entities. This comparison would describe the fiduciary duty standards in the existing entities, the new entity and, where the new entity is

[20] See Items 4(b) and 21(c) to Form S–4 (17 CFR 239.25).

[21] See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b).

[22] 17 CFR 229.801(e).

[23] See Item 4 to Form S–4 (17 CFR 239.25), Item 4 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 10 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

[24] See Items 4 and 18(a) to Form S–4 (17 CFR 239.25), Item 5 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 12 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

[25] See Item 6 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)).

formed under a different jurisdiction, the material differences between the fiduciary duty standards in the old and new jurisdictions.

e. Management.[26] Information about management's business experience is material to an investor's evaluation of an offering and determination of whether to invest in the issuer. While this is true in any offering, it is especially significant when investors must rely largely on the individual expertise and business acumen of the general partner or other adviser to select and operate the properties to be acquired, and realize the stated investment objectives. Where the history of the officers and directors either individually or as a whole is inconsistent with the express or implied assertion that the partnership will benefit from their management, additional disclosure in support of this assertion should be provided. In the discussion of the business experience of officers and directors, where job titles do not indicate clearly the nature of the person's former duties or where job titles may give a misleading impression of the individual's experience, additional disclosure should be provided in order to clarify the nature of the individual's duties.

f. Investment Objectives and Policies.[27] The investment objective of an offering should be clearly and concisely set forth. This discussion must be consistent with other disclosures. For example, where a document describes the possible use of high leverage and an income investment objective, the disclosure would have to address how the business plan relying on high leverage would still permit an income objective.

Further, there must be a reasonable basis to support a stated objective. In this regard, consideration must be given to the effect that conditions or trends in the economy, such as the recent conditions in the real estate industry, may have on the likelihood that a stated investment objective will be realized within the stated anticipated term of the partnership.

Where a general partner may amend the investment objectives of the partnership without the vote of the limited partners, the disclosure document should make clear that, in essence, the investment objectives are those defined by the general partner from time to time. In such cases, lengthy descriptions of a partnership's investment objectives may obscure the fact that the investor is, in essence, buying an interest in an entity with unlimited investment objectives. The document should disclose the general partner's present plans while making clear that these may be totally recast. The document should set forth a description of the factors to be considered by the general partner in making such a change.

Where a partnership agreement permits the partnership to engage in joint ventures, disclosure should be made of those activities that the partnership may engage in through a joint venture that it could not otherwise undertake. For example, where the partnership agreement precludes the purchase of properties under construction, the ability of the partnership to purchase such properties through a joint venture should be disclosed. In such case, the risks and business implications of such activities should be clearly stated.

Recently, several issuers have disclosed in their prospectuses that the general partner, as part of its analysis of prospective property acquisitions, "will retain a national accounting firm to perform certain agreed-upon procedures related to the general partner's financial forecast with respect to each property acquisition" and that "[s]uch procedures will not constitute an examination of the forecast in accordance with standards established by the American Institute of Certified Public Accountants." Disclosure of an independent accountant's involvement with prospective financial statements or forecasts should be limited to circumstances in which the accountant has performed, in accordance with standards issued by the American Institute of Certified Public Accountants, an "examination" of prospective statements that are presented in the prospectus. Disclosure of "agreed-upon procedures" performed or to be performed by an accountant is inappropriate under all circumstances.[28]

In a roll-up transaction, the material effects flowing from the changed investment objectives and policies should be disclosed clearly. For example, most limited partnerships, before a roll-up, are expected to have a finite life, at the end of which they will dissolve and distribute their assets. After a roll-up, the surviving entity will be operated as an ongoing business with no obligation to make distributions or to dissolve. Therefore, while an investor was expecting annual cash distributions and proceeds from the sale of assets and the dissolution of the partnership after a seven to ten year period, the investor will receive dividends when declared by the successor and will be dependent upon the securities markets in order to liquidate his investment.

In addition, most limited partnerships before a roll-up are not publicly traded, so the value of the investment is extremely difficult to determine. After a roll-up, the value of the investment is based on the market for securities of entities operating in a specific industry. This value generally is based on a multiple of operating cash flow and a factor for the market's expectation of the likelihood of the continuation of that cash flow, rather than the appraised value of the underlying assets.

g. Summary of Partnership Agreement.[29] The issuer should identify and discuss the voting and other material rights of the limited partners under the partnership agreement. This discussion should include, but not be limited to, the right to call meetings, vote upon extraordinary transactions such as mergers and consolidations, obtain a copy of the list of partners, receive appraisal or dissenter's rights, inspect partnership books and records, remove and replace the general partner, compel dissolution or liquidation or amend the partnership agreement.

The voting rights of limited partners should be specifically set forth in this section. Such description should include the rights limited partners have to vote on any matter, the vote of limited partners necessary to approve any proposal and the rights of limited partners to submit a proposal to the vote of limited partners.

Any limitations or conditions (including those under state law) that the general partner may place on the exercise of these rights should be explained. If limited partners are not afforded the foregoing rights or if the partnership agreement restricts the rights that limited partners otherwise would have enjoyed under state law, this information should be disclosed. In addition, the issuer should characterize the extent of discretion retained by the

[26] See Item 401 of Regulation S–K (17 CFR 229.401), Item 9 of Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 11 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

[27] See Item 4 to Form S–4 (17 CFR 239.25), Item 10 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 7 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

[28] See AICPA, Guide For Prospective Financial Statements (1986).

[29] See Item 4(a)(4) to Form S–4 (17 CFR 239.25), Item 14 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 15 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

general partner with regard to the operations of the partnership.

In addition to the foregoing, the issuer in a roll-up transaction should clearly compare the rights of the limited partners under the new partnership agreement or governing instruments with the rights of the limited partners under the existing partnership agreements. If limited partners will be affected differently depending on the partnership entity in which they have invested in, a partnership by partnership comparison must be made. If the new entity will be formed in a different jurisdiction, the differences in the rights under the respective state laws should also be described. A similar comparison of the actions that the general partner may take under the new partnership agreement with the actions that the general partner may take under the existing partnership agreements should also be provided.

h. Distributions and Allocations.[30] This section is often too complex for the investor to understand. In order to enhance investor understanding of this section, the narrative text should include shortened definitions of terms that are fully defined in the glossary. This will enable readers to gain a general understanding of the nature of the distributions and allocations without having to refer constantly to the glossary.

It is often unclear whether the distributions represent a return of investors' capital or a return on investors' capital. Whenever cash distributions are discussed on a historical basis, the disclosure should make clear the nature of the distribution. When distributions are discussed on a prospective basis, the disclosure also should make clear, to the extent known, the nature of the distribution.

Limited partnership prospectuses often disclose that limited partners will have a "priority" or "preferred" return on distributions made by the partnership. These descriptive terms should not be used if the right of limited partners to receive their distributions is in any way contingent. More often than not, even though limited partners are purportedly given a "preferred right" to a specified percentage of cash distributions, this right may only be invoked after substantial operating fees and expenses have been paid to the general partner. The disclosure should make clear that, if true, the "priority" or "preferred" distribution follows and does not preclude payments to the general partner. The disclosure should give a sense of the size of such payments to the general partner as well. In the rare circumstance where the right is not contingent and limited partners are guaranteed a priority return, consideration should be given as to whether a separate security exists.[31]

i. Sales Literature.[32] Registrants are reminded of the obligation, in Item 19D of the Guide, to submit all sales literature to the staff of the Commission supplementally prior to its use. This obligation is not extinguished once a registration statement is declared effective. Registrants must continue to submit all sales literature to the staff. Sales literature includes all material used in connection with the sale of the units, whether or not it is prepared by the general partner or its affiliates.

Registrants are also reminded that sales material should present a balanced discussion of both risk and reward and the contents of the literature should be consistent with the prospectus.

3. Limited Partnership Offerings

a. Estimated Use of Proceeds.[33] A principal problem with the presentation of the issuer's estimated use of proceeds in a limited partnership offering is the lack of prominent disclosure concerning the amount that will actually be invested in the business of the partnership. It is often the case in limited partnership offerings that a substantial percentage of the original investment will pay the expenses of the offering and fees to the general partner and its affiliates. The difference between the amounts provided by investors and the amounts expected to be actually invested in assets is of obvious significance to potential investors.

Accordingly, prominent disclosure should be made of the percentage of an investment that will actually be available for investment after the deduction of all front-end fees, commissions, expenses and compensation. This information should be presented in the narrative disclosure before the estimated use of proceeds table. Additionally, it is suggested that the bottom line of the use of proceeds table should reflect this amount. Cover page disclosure of this percentage should also be made in order to place the amount offered in its proper context.

b. Prior Performance.[34] In partnership offerings, the general partner is required to discuss the "track record" or prior performance of other programs sponsored by the general partner. A problem arising with greater frequency is what information is necessary when a general partner was a sponsor of a prior program, but has been removed from that program. Prior performance information should be provided for the period during which that person was the general partner. If the results (*i.e.* final sales of properties) for such a program did not meet expectations or the original investment objectives of the program, a person who was a general partner for any part of the operating period should provide information concerning the adverse developments experienced by that prior program.

The prior performance tabular information should reflect whether prior programs have been able to achieve their stated objectives. Adverse developments contained in the tables should be addressed in detail in the narrative section. The narrative section should be updated whenever the tabular information is updated.

Tabular information should be provided for all programs which have had a closing or have closed within the time period specified by the applicable table. If a program has had a closing and has begun operations, prior performance information should be provided for that program.

With regard to Table III of the Guide, the amount of cash generated from operations should be calculated based on the definition of operating cash flow from the Statement of Cash Flows prepared in accordance with Financial Accounting Standard ("FAS") 95. If the amount in the table differs from the amount that would be reflected in the Statement of Cash Flows, a footnote should be included reconciling the difference. Also with regard to Table III, a footnote should be included that explains how those programs experiencing operating deficiencies are being funded. Typically such deficiencies are built into the program during its first years of operations. However, continuing deficiencies can represent an adverse development that requires additional disclosure. Finally, if a program was designed to provide tax credits to investors, specific line items should be included in both parts of the table that disclose the amount of tax

[30] See Item 9 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d))

[31] A guaranty may be a separate security under section 2(1) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77b(1); 15 U.S.C. 77a *et seq.*).

[32] See Item 19 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)).

[33] See Item 504 of Regulation S–K (17 CFR 229.504), Item 3B to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)) and Item 8 to Industry Guide 4, Item 801(d) of Regulation S–K (17 CFR 229.801(d)).

[34] See *supra* note 16.

credits that have been provided to investors.

III. UPDATING OF INFORMATION [35]

Issuers engaged in real estate offerings traditionally have updated prospectuses by means of supplements attached to the basic prospectus. This practice may result in a confusing, disjointed and lengthy disclosure document. In these circumstances, it often is left to the investor to discern not only which information has or has not been modified or superceded, but the substance of the change as well. Material information that ordinarily would appear in the forepart of a prospectus may be spread out in different documents. Moreover, other information in the initial prospectus, such a risk factors or investment objectives, may not be updated in a clear and concise manner. Therefore, just as in the case of non-real estate offering documents, when the document becomes confusing, a post-effective amendment containing a reprinted prospectus will be required. Where a supplement is used, consideration should be given to including an updated summary section as part of the supplement.

IV. MATCHING SERVICES AND CROSSING ARRANGEMENTS

There appears to have been a recent increase in the number of limited partnerships or real estate investment trusts attempting to create an alternative secondary market for their security interests. The most common method used has been a form of matching service, crossing arrangement or some other such liquidity enhancement plan through which a person wishing to sell an equity interest will be matched with someone who is seeking to buy an equity interest. This service often is created to supplement or work in conjunction with a dividend reinvestment plan. Usually, the general partner, advisor or one of their affiliates structures the arrangement and facilitates the matching of potential buyers and sellers. In certain circumstances, services provided by affiliated entities or their associated persons pursuant to a matching service or crossing arrangement could subject such persons to the broker-dealer registration requirement of Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). [36]

If the general partner, advisor or one of their affiliates is involved in the crossing arrangement, the sale of securities through the arrangement is an offer or sale by the issuer for purposes of section 2(3) [37] and section 5 [38] of the Securities Act. Therefore, the issuer must register under section 5 of that Act a good faith estimate of the number of shares expected to be purchased through the arrangement. The issuer also must undertake to keep the registration statement "evergreen" during the existence of the arrangement. This treatment is similar to that accorded employee stock purchase plans and dividend reinvestment plans for determining whether registration is required under the Securities Act. [39]

List of Subjects in 17 CFR Parts 231 and 241

Reporting and recordkeeping requirements, Securities.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Parts 231 and 241 of title 17, chapter II of the Code of Federal Regulations are amended by adding each of the following Release Nos. and the release date of June 17, 1991, to the list of interpretive releases in each part: 33–6900, 34–29314.

By the Commission.

Dated: June 17, 1991

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91–14770 Filed 6–24–91; 8:45 am]

BILLING CODE 8010–01–M

[35] See Item 20 to Industry Guide 5, Item 801(e) of Regulation S–K (17 CFR 229.801(e)).

[36] 15 U.S.C. 78o(b); see Rule 3a4–1 under the Exchange Act [17 CFR 240.3a4–1] and Securities Exchange Act Release No. 22172 (June 27, 1985); see also Tri-State Livestock Credit Corporation, letter issued October 18, 1989 and CNB Corporation, letter issued June 9, 1989.

[37] See 15 U.S.C. 77b(3).

[38] See 15 U.S.C. 77e.

[39] See Securities Act Release Nos. 4790 (July 13, 1965), 5515 (August 8, 1974) and 6188 (February 1, 1980); see also Sierra Capital Realty Trust VI Co. and Sierra Capital Realty Trust VII Co., letter issued July 5, 1990.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Number 34-29315; IC-18201 [File No. S7-22-91]]

RIN 3235-AD53

Regulation of Securityholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission is proposing several amendments to its proxy rules under section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [1] that would facilitate securityholder communications in furtherance of the goal of informed proxy voting, and would reduce the costs of compliance with the proxy rules for all persons engaged in a proxy solicitation. These proposals constitute the first in a series of possible rulemaking initiatives relating to the proxy solicitation process that are expected to arise from the Commission's ongoing proxy review.

First, the Commission is proposing a new exemption from all proxy rules but the antifraud provisions that would cover solicitations by any "disinterested" person, to be defined as a person who wishes to solicit in regard to any matter subject to action by securityholders, but who has no material economic interest in that matter and who is not seeking authority to act as a proxy for securityholders.

Second, the Commission is proposing to amend the proxy rules to limit the types of proxy soliciting material that would be required to be filed in preliminary form to the proxy statement and form of proxy.

Third, the proposed amendments would provide that all proxy material, whether in preliminary or definitive form, would be public upon filing with the Commission.

Fourth, amendments to Rule 14a-7 [2] are being proposed to add information to the securityholder list that currently must be provided by the registrant to a requesting securityholder, and to shift the election of whether to provide the list or to mail from the registrant to that securityholder. Comment is sought on the proposed alternative of leaving the election with the registrant, on the condition that it bear the costs of mailing the requestor's soliciting materials to securityholders if it chooses to mail rather than to provide the list.

DATES: Comments should be received on or before August 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-XX-91. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Catherine Dixon, Division of Corporation Finance, at (202) 272-3097, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

I. Executive Summary

In recent years, securityholders have sought a more active participatory role in the governance of public issuers. Prompted by actions of management, state legislatures, and courts having the intent or effect of limiting securityholder voting rights, as well as governmentally imposed fiduciary voting obligations and the practical difficulties attendant to divestiture of sometimes substantial portfolio securities holdings, individual and institutional investors alike have focused increasingly on their rights and obligations to cast informed proxy votes. Both institutional and individual securityholders have undertaken to influence issuer decisionmaking through a variety of means in the proxy solicitation context, including discussion with other securityholders and direct dialogue with boards of directors and management. As securityholders' awareness of the rights and responsibilities of ownership has heightened, there has been a growing public focus on the Commission's proxy rules and their impact upon the process of inter-securityholder communication, in particular on the ability of securityholders to take issue with management through the proxy voting process.

During its review of limited partnership "roll-up" transactions, [3] the Commission has learned of substantial investor concern regarding the restraints and costs imposed by the proxy rules on collective action by individual investors in limited partnerships who wish to respond to what they perceive as unfair transactions. [4] Among the principal impediments investors have cited are the need to comply with the entire panoply of proxy disclosure and filing requirements simply to communicate lawfully any objections to a proposed roll-up to more than 10 other limited partners; [5] the difficulty limited partners encounter in obtaining a list of securityholders from the general partner to facilitate such communications; [6] and the lack of sufficient time to enable investors to evaluate and comprehend the often complex roll-up disclosure documents. [7]

For more than a year, [8] the Commission has been engaged in a

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[1] 15 U.S.C. 78n(a).

[2] 17 CFR 240.14a-7.

[3] "Roll-up" transactions typically involve the reorganization of two or more public or private limited partnerships or real estate investment trusts ("REITs") into a new, publicly traded entity, generally a corporation, limited partnership, or business trust or other entity to be taxed as a REIT. See Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Securities Subcommittee of the Committee on Banking, Housing and Urban Affairs, United States Senate (Feb. 27, 1991) ("Commission Senate Testimony"). Investors in the predecessor entities receive an interest in the surviving entity, usually in the form of an equity security but in some instances a debt security or some combination of debt, equity or cash. *Id.* at 10.

[4] See Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Telecommunications and Finance Subcommittee of the Committee on Energy and Commerce, U.S. House of Representatives (April 23, 1991) ("Commission House Testimony"); see also Commission Senate Testimony.

[5] See, e.g., Testimony of John F. Blake, Chairman, American Association of Limited Partners, Oversight Hearings on the Reorganization of Limited Partnerships, Before the Telecommunications and Finance Subcommittee of the Committee on Energy and Commerce, U.S. House of Representatives, at 14–15 (March 21, 1991) ("Blake Testimony"); Testimony of Richard G. Wollack, Chairman, Liquidity Fund Management, Inc., Oversight Hearing on Limited Partnership Reorganizations, or "Rollups," Before the Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs, U.S. Senate, at 5–6, 9, 13 (Feb. 27, 1991) ("Wollack Testimony").

[6] See, e.g., Blake Testimony, supra, at 15; Testimony of Glen Bigelow, President, Bigelow Management, Inc., Oversight Hearings on the Reorganization of Limited Partnerships, Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, U.S. House of Representatives, at 4 (March 21, 1991) ("Bigelow Testimony"); Wollack Testimony, supra, at 5, 13.

[7] See, e.g., Blake Testimony, supra, at 15–16; Bigelow Testimony, supra, at 7; Wollack Testimony, supra, at 5–6, 13.

[8] Chairman Richard C. Breeden formally announced the commencement of the Commission's proxy review project in a speech to the Council of Institutional Investors in April 1990. See Remarks of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Council of Institutional Investors Annual Meeting (Wash., DC, April 2, 1990).

comprehensive review of the current efficacy of the federal proxy rules as applied to all registrants in light of such recent developments as the significant change in securityholder demographics resulting in a concentration of institutional equity ownership and voting power, and increasing securityholder activism with respect to matters of corporate or partnership governance. This review encompasses, but is not limited to, the significant number of letters received by the Commission that either propose or oppose revision of the existing proxy system.[9]

Proposals for change in the current proxy regulatory scheme, submitted to the Commission by the California Public Employees Retirement System ("CalPERS"), the United Shareholders Association ("USA"), and other shareholder organizations, as well as by individuals such as Elmer Johnson, a former corporate general counsel, manifest a strong concern that the Commission's proxy filing and disclosure requirements function to restrict unduly securityholder communications not only with one another, but also with the issuer's management and board of directors as well as third-party sources of proxy voting information unaffiliated with any person participating in a particular solicitation.[10] Such diverse entities or persons as the American Bar Association's Subcommittee on Tender Offers and Proxy Solicitations, the United Mineworkers of America, and the American Corporate Counsel Association to varying degrees share this concern. Conversely, organizations such as The Business Roundtable, the American Society of Corporate Secretaries and the Business Council of New York object to modification of the proxy rules to address these concerns, arguing that the recent success of securityholders in achieving their corporate governance goals through the proxy system attests to the adequacy of the federal proxy rules in protecting securityholder voting rights.

Recognizing the fundamental importance of the securityholder franchise, Congress granted the Commission very broad authority to regulate proxy solicitations pursuant to section 14(a) of the Exchange Act:

> It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

This sweeping grant of regulatory authority was based on a strong Congressional belief that:

> (F)air corporate suffrage is an important right that should attach to every equity security bought on a public exchange.* * * For this reason, the proposed bill (resulting in section 14(a)) gives the Commission * * * the power to control the conditions under which proxies may be solicited with a view to preventing the recurrence of abuses which have frustrated the free exercise of the voting rights of stockholders.[11]

The Commission's review of its proxy rules and the voting process these rules overlay is focused principally on three basic questions:

(1) Do the rules unnecessarily restrict or interfere with the ability of securityholders to communicate among themselves, or with management?

(2) Do the rules impose unnecessary costs on the registrant and soliciting persons?

(3) Are there securityholder interests that are not adequately addressed under the current rules?

The issues being considered within this review are diverse and wide-ranging. Some raise substantial policy questions, whereas others are quite technical in nature and focus on the efficiency of the proxy and voting processes. The proposals made today are intended to facilitate securityholder communications, and to reduce the costs of compliance with the proxy rules for all persons engaged in a solicitation, registrants as well as securityholders, consistent with the protection of investors. If adopted, these proposals would reduce substantially the costs and restraints cited by limited partners as impairing their ability effectively to express opposition to roll-up transactions they consider to be unfair.

A new exemption from the proxy filing and disclosure requirements is proposed that would cover a "disinterested" person's communication with, or other form of solicitation of, securityholders with respect to a matter to be acted upon by such securityholders pursuant to a solicitation of proxies, consents or authorizations. A "disinterested" person would be defined as a securityholder or other person who has no material economic interest (other than as a securityholder) in the matter subject to securityholder action, provided that no form of proxy, consent or authorization is sought either by such person or on its behalf. Thus, for example, a limited partner who receives a proxy statement and form of proxy from a general partner soliciting a proxy to approve a roll-up may communicate his or her objections freely to other limited partners without having to comply with the proxy filing and disclosure

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[9] All but two of the more than 40 submissions to the Commission are in the form of letters addressed to the Commission or staff of the Division of Corporation Finance. These submissions have been made available to the public in File No. 4–353. Two of the submissions are cast as formal rulemaking petitions pursuant to Commission Rule of Practice 4 (17 CFR 201.4): The Petition of the United Shareholders Association, dated and filed March 20, 1990 ("USA Petition"), and a letter from Fidelity Management & Research Co. to Linda C. Quinn, dated July 18, 1990, and filed July 25, 1990 ("Fidelity Letter"). More than 500 letters have been submitted by individual USA members in support of the organization's petition. The Commission also has considered, in the course of its review, various legislative proposals for revision of the proxy system introduced during the present and previous sessions of Congress, as well as ideas for proxy reform propounded by members of the academic and legal communities.

[10] See Commission Public File No. 4–353.

[11] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 13–14 (1934). See also S. Rep. No. 1455, 73d Cong., 2d Sess. 77 (1934) (emphasis added) (mindful that securityholders are entitled to information and a voice in the "major policy decisions" made pursuant to the proxy voting process, "the committee recommends that the solicitation and issuance of proxies be left to regulation by the Commission"). See *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375, 381 (1970); *J.I. Case* v. *Borak*, 377 U.S. 426, 431–32 (1964). Other federal courts have construed expansively the Commission's Section 14(a) authority. See, e.g., *SEC* v. *Transamerica*, 163 F.2d 511, 518 (3d Cir. 1947)("(I)t was the intent of Congress to require fair opportunity for the operation of corporate suffrage. The control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)."), cert. denied, 332 U.S. 847 (1948); *Greater Iowa Corp.* v. *McLendon*, 378 F.2d 783, 797 (8th Cir. 1967) (in construing scope of Section 14(a), the court opined that "(w)e are aware that historically it is extremely difficult to oust entrenched management or even to challenge directors to account for their managerial responsibilities. We think dissenting securityholders have (an) absolute right to challenge entrenched management and to question entrenched management's stewardship (through the proxy process). No arbitrary blocks or barriers should be raised by the courts in exercising this phase of corporate suffrage."). Indeed, as the Court of Appeals for the D.C. Circuit emphasized, the "clear import of the language, legislative history and administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right—some would say their duty—to control the important decisions which affect them in their capacity as stockholders and owners of the corporation." *Medical Comm. for Human Rights* v. *SEC*, 432 F.2d 659, 680–81 (DC Cir. 1970), vacated as moot, 404 U.S. 403 (1971). Almost 20 years later, this court clearly recognized the statutory authority vested in the Commission to regulate the proxy solicitation process, and Congress's intention that this authority encompass the power to regulate disclosure and the conditions under which proxies are solicited. See *SEC* v. *The Business Roundtable*, 905 F.2d 406 (D.C. Cir. 1990)(holding, however, that this section 14(a) authority could not support Commission Rule 19c–4 (17 CFR 240.19c–4)).

requirements. Consistent with the investor protection goal of section 14(a), however, this exemption would not insulate any solicitation from the antifraud prohibitions of Rule 14a–9.[12] Comment is sought on alternatives to facilitate securityholder communications while maintaining a public record of the otherwise exempted solicitation effort.

The Commission in addition is proposing to amend its proxy rules to extend the type of solicitation material not subject to a preliminary filing requirement to encompass all proxy soliciting materials, other than those proxy statements and forms of proxy not already permitted to be filed solely in definitive form. The proposed amendments also would provide that all proxy materials, whether in preliminary or definitive form, would be public upon filing. These proposed changes are intended to provide greater ease of communication with securityholders by registrants and soliciting securityholders alike, and to reduce compliance and timing costs for both.

Finally, the Commission proposes today to amend Rule 14a–7 to permit the person making a request for a securityholder list under the rule, rather than the registrant, to elect whether, at his or her own expense, to obtain the list subject to prescribed limitations on the scope of its use, or to have the registrant mail the requestor's soliciting materials. The proposed amendments to Rule 14a–7 further would expand the required stockholder list information to include both the number of securities held by identified holders, and certain specified information regarding beneficial ownership to the extent such information is reasonably available to the registrant. Comment is solicited on an alternative version of the proposed amendment that, while leaving the election with the registrant, would impose the cost of mailing on the registrant.

A. The Existing Proxy Regulatory Framework

Any solicitation of proxies in respect of securities registered pursuant to section 12 of the Exchange Act [13] or issued by an investment company registered under the Investment Company Act of 1940 [14] is subject to the filing and disclosure requirements of the Commission's proxy rules.[15] As defined by the Commission, the term "solicitation" encompasses not only a request that a shareholder execute a proxy, but also "(t)he furnishing of a form of proxy or other communication to securityholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy." [16] Thus, the proxy rules apply to any person seeking to influence the voting of proxies, regardless of whether the person is seeking authorization to act as a proxy. Both the courts and the Commission have construed this necessarily fact-intensive test broadly to bring within the ambit of the proxy rules any communication that, under the totality of relevant circumstances, is considered "part of a continuous plan ending in a solicitation and which prepare(s) the way for its success." [17]

Rule 14a–3(a) [18] bars commencement of any solicitation covered by the proxy rules until shareholders receive a written proxy statement containing the information prescribed by Schedule 14A.[19] Except with respect to proxy statements filed on behalf of registrants that address only specified routine, or "plain vanilla," matters,[20] Rule 14a–6(a) requires that the proxy statement, together with the form of proxy and any other soliciting material to be furnished concurrently to shareholders, be filed in preliminary form with the Commission at least ten days before transmittal to shareholders. In recognition of the timing problems presented by these filing and dissemination requirements where there are opposing solicitations or other third-party actions that could affect the outcome of a solicitation, Rules 14a–11(d) [21] and 14a–12 [22] authorize solicitations before proxy statement delivery in connection with contested election and other, non-election solicitations, respectively. These solicitations nevertheless remain subject to a five-business day preliminary filing requirement.[23]

Exemptions from application of the filing and disclosure requirements of the proxy rules, but not from the antifraud provisions of Rule 14a–9, have been adopted by the Commission for non-issuer solicitations directed to 10 or fewer persons,[24] and for proxy voting advice rendered in the ordinary course of business by financial advisers to persons with whom the adviser has a prior business relationship.[25] Other exemptions have been promulgated for solicitations of beneficial owners by record owners, solicitations by beneficial owners with regard to their securities, solicitations in a public offering (other than Rule 145

[12] 17 CFR 240.14a–9.

[13] 15 U.S.C. 78l.

[14] 15 U.S.C. 80a–1 et seq. See Rule 20a–1 under the Investment Company Act of 1940 (17 CFR 270.20a–1).

[15] See section 14(a) of the Exchange Act (15 U.S.C. 78n(a)), and Rules 14a–1 and 14a–2(b)(1) thereunder (17 CFR 240.14a–1 and 240.14a–2(b)(1)). Even where no proxies or consents are solicited by a registrant, an information statement containing disclosure comparable to that required in the proxy statement on Schedule 14A (17 CFR 240.14a–101) must be provided to securityholders where a meeting of securityholders is to be held or shareholders are asked to act by consent. See section 14(c) of the Exchange Act (15 U.S.C. 78n(c)), and Regulation 14C thereunder (17 CFR 240.14c–1 *et seq.*). It is important to note that issuers with securities listed on a national stock exchange or quoted on the National Association of Securities Dealers, Inc.'s National Market System are required to solicit proxies from securityholders under specified circumstances. See, *e.g.*, New York Stock Exchange Listed Company Manual Section 901.01; American Stock Exchange Company Guide Sections 710–713; NASD Manual, NASD Bylaws, Schedule D, part III § 5(g).

[16] Rule 14a–1(*l*) (17 CFR 240.14a–1(*l*)). Pursuant to Rule 14a–1(*l*)(2), the term "solicitation" does not include the furnishing of a form of proxy to a shareholder upon the latter's unsolicited request, the issuer's performance of acts mandated by Rule 14a–7 (17 CFR 240.14a–7) (securityholder list requirement), or ministerial acts performed by any person on behalf of the soliciting party.

[17] *SEC* v. *Okin*, 132 F.2d 784, 786 (2d Cir. 1943) (Hand, J.). See *Long Island Lighting Co.* v. *Barbash*, 779 F.2d 793, 796 (2d Cir. 1985) and Brief of the Securities and Exchange Commission, *Amicus Curiae*, at 8, filed therein ("Lilco Brief"); *Sargent* v. *Genesco, Inc.*, 492 F.2d 750, 766–68 (5th Cir. 1974); *Trans World Corp.* v. *Odyssey Partners*, 561 F. Supp. 1315, 1320 (S.D.N.Y. 1983); *Canadian Javelin, Ltd.* v. *Brooks*, 462 F. Supp. 190, 194 (S.D.N.Y. 1978).

[18] 17 CFR 240.14a–3.

[19] 17 CFR 240.14a–101. A prospectus filed as part of a registration statement on Form S–4, Form F–4, or Form N–14 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), may be used in lieu of a Schedule 14A proxy statement.

[20] See Rule 14a–6(a) (17 CFR 240.14a–6(a)); Exchange Act Release No. 28369 at n. 244 (Feb. 8, 1991) (56 FR 7242) (certain solicitations of proxies in respect of section 12 registered securities or securities of registered investment companies involving the election of directors, the election, approval or ratification of independent auditors, or a securityholder proposal included in the registrant's proxy statement, as well as a proposal for amendment of an employee benefit plan; and, in the case of investment companies, solicitations involving proposals to renew, without change, any investment advisory or other contract that previously has been the subject of a proxy solicitation for which proxy materials were filed with the Commission, or to increase the number of open-end investment company shares authorized to be issued).

[21] 17 CFR 240.14a–11(d).

[22] 17 CFR 240.14a–12.

[23] Rule 14a–11(e) (17 CFR 240.14a–11(e)); Rule 14a–12(b) (17 CFR 240.14a–12(b)). Additional soliciting materials must be filed in preliminary form two business days prior to their use. Rule 14a–6(b) (17 CFR 240.14a–6(b)). Personal soliciting material and instructions must be on file five days prior to their use. Rule 14a–6(d) (17 CFR 240.14a–6(d)). Speeches, scripts and press releases, however, need only be filed in definitive form upon their use. Rule 14a–6(h) (17 CFR 240.14a–6(h)).

[24] Rule 14a–2(b)(1) (17 CFR 240.14a–2(b)(1)).

[25] Rule 14a–2(b)(2), 17 CFR 240.14a–2(b)(2).

transactions), solicitations subject to the Bankruptcy Code or Public Utility Holding Company Act of 1935,[26] and certain "tombstone" advertisements as to the availability of a proxy statement.[27]

The proxy rules do not impose a filing obligation on securityholders who simply communicate mutual concerns regarding the issuer's affairs prior to a formal proxy solicitation, so long as the communications are not reasonably calculated to "prepar[e] the way" for a solicitation.[28] However, the uncertainty generated by expansive judicial and administrative interpretations of the term "solicitation" and the perceived narrowness of the regulatory exceptions to that definition are believed by many to deter constructive information-sharing, both among securityholders and between registrants and their securityholders.[29] Critics cite by way of example the difficulty of assessing potential proxy liability stemming from inter-investor discussions of opposition to management proposals, particularly in the context of an impending partnership roll-up, or support for Rule 14a–8 [30] proposals presented by other securityholders in the registrant's proxy statement.[31]

II. Proposed New Rules and Amendments

Some have urged the Commission to address concerns regarding the broad scope of the present "solicitation" definition by promulgating a more precise regulatory standard that would define regulated soliciting activity by reference to such criteria as the timing, purpose and subject matter of a particular securityholder communication, and the communicator's relationship to a participant. However, the Commission and the courts traditionally have weighed these factors in what is necessarily a case-by-case analysis that does not lend itself well to a bright-line test.[32] Whether a particular communication should be deemed part of a solicitation turns on "the purpose for which the communication was published—*i.e.*, whether the purpose was to influence the shareholders' decisions," as evidenced by the substance of the communications and the circumstances under which they were transmitted.[33] This determination can be made only in light of such objective factors as the content of the communication itself, the audience to which it is directed, its timing with respect to a proxy solicitation, and the connection or common interest, if any, between the communicators and the soliciting parties.[34]

The Commission is proposing a new exemption that would promote the communication of material information to securityholders through removal of the prescribed proxy filing and disclosure obligations, while retaining the antifraud protections of Rule 14a–9, for those who wish to solicit on any matter subject to action by securityholders, but who do not seek the authorization to act as a proxy for, or obtain a consent or authorization from, such securityholders. All proxy disclosure and filing requirements would continue to apply to solicitations by the registrant and other persons seeking the power to act by proxy, consent or authorization, or who otherwise have a material economic interest in the outcome of a solicitation other than merely as a securityholder of the registrant.

To streamline the solicitation process, reduce costs and minimize timing concerns consistent with the protection of securityholders, the proposals in addition would eliminate the preliminary filing requirements for soliciting materials, other than the required written proxy statement and any form of proxy. All soliciting material would continue to be filed with the Commission in definitive form. The current exemption from filing proxy statements in preliminary form for "plain vanilla" registrant proxy statements would remain unchanged.

Also proposed as a means of facilitating securityholder communication in furtherance of the Commission's statutory duty to assure informed proxy voting decisions is an amendment to Rule 14a–7 that would render more meaningful the securityholder information contained in securityholder lists, and would make such lists more readily accessible to soliciting securityholders.

A. "Disinterested Person" Exemption

The new exemption to be embodied in proposed Rule 14a–2(b)(1) would apply to a "disinterested" person's communications with, or other forms of solicitation of, securityholders with respect to any matter subject to securityholder action pursuant to a solicitation of securityholder proxies, consents or authorizations. To qualify as "disinterested" within the meaning of the proposed exemption, a person must not: (1) Have a "material economic interest" in the outcome of the solicitation; (2) seek the power, either directly or indirectly, to act as a proxy on behalf of a securityholder; or (3) furnish or otherwise request a consent or authorization of a securityholder for delivery to the registrant. Any person acting on behalf of a person who does not meet the requirements of proposed Rule 14a–2(b)(1) likewise would not be entitled to claim disinterested status.

Examples of relationships that would give rise to a presumption that a disqualifying "material economic interest" exists would be outlined in a note to proposed Rule 14a–2(b)(1). Securities ownership in any person engaged in the solicitation of proxies, consents or authorizations alone would not constitute such an interest, unless the amount of securities owned gave rise to affiliate status.[35] Nor would mere employment by the registrant or by any person soliciting in opposition to a registrant's management, other than in the capacity of officer or director, ordinarily establish the requisite interest. On the other hand, a material

[26] 15 U.S.C. 79a *et seq.*

[27] Rule 14a–2(a) (17 CFR 240.14a–2(a)).

[28] *Studebaker Corp.* v. *Gittlin*, 360 F.2d 692, 696 (2d Cir. 1966).

[29] *See*, e.g., Blake Testimony, supra, at 14–15; Letter from the ABA's Subcommittee on Proxy Solicitations and Tender Offers, Federal Regulation of Securities Committee, Section of Business Law, to Linda C. Quinn, Director, Division of Corporation Finance, dated April 27, 1990, at 6–7 ("ABA Letter"); Letter from CalPERS to Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated Nov. 3, 1989, at 9–10 ("CalPERS Letter"); Letter from the American Corporate Counsel Association to Linda C. Quinn, Director, Division of Corporation Finance, dated July 25, 1990, at 16–18; USA Petition, supra, at 35–38; Fidelity Letter, supra, at 2–3. Accord Roe, A Political Theory of American Corporate Finance, 91 Col. L. Rev. 10, 28 (1991); Black, Shareholder Passivity Reexamined, 89 Mich. L. Rev. 520, 536–45 (1990) ("Black"); Sommer, Corporate Governance in the Nineties: Managers v. Institutions, 59 U. Cinn. L. Rev. 357, 368 (1990) ("Sommer"); Dent, Toward Unifying Ownership and Control in the Public Corporation, 1989 Wis. L. Rev. 881, 904–05.

[30] 17 CFR 240.14a–8.

[31] See, e.g., Gilson & Kraakman, Reinventing the Outside Director: An Agenda for Institutional Investors, 43 Stan. L. Rev. 401, 433 (1991); Coffee, SEC 'Overregulation' of Proxy Contests, N.Y.L.J., Jan. 31, 1991, at 5, 7; Taylor, Can Big Owners Make a Difference?, 68 Harv. Bus. Rev. 70, 75–78 (Sept.–Oct. 1990).

[32] See *Lilco Brief*, *supra*, at 8; see, e.g., supra n. 17 and *infra* n. 34 (citing cases).

[33] Lilco Brief, *supra*, at 8. See E. Aranow & H. Einhorn, Proxy Contests for Corporate Control 103–104 (2d ed. 1968) ("Aranow").

[34] See *id.*; Mobil Corp. (no-action letter avail. March 3, 1986); Sirignano & Baltz, Simultaneous Proxy Contests and Tender Offers, 3 Insights 3, 7 (1988). *Accord Long Island Lighting Co.* v. *Barbash*, 779 F.2d 793 (2d Cir. 1985). Judicial decisions have demonstrated that, even though the flexible "solicitation" test is relatively broad, it is not without limit. See, e.g., *Smallwood* v. *Pearl Brewing Co.*, 489 F.2d 579 (5th Cir.), cert. denied, 419 U.S. 873 (1974); *Brown* v. *Chicago Rock Island & Pac. R.R. Co.*, 328 F.2d 122 (7th Cir. 1964); *Calumet Indus.* v. *MacClure*, 464 F. Supp. 19 (N.D. Ill. 1978); *Scott* v. *Multi-Amp. Corp.*, 386 F. Supp. 44 (D. N.J. 1974).

[35] See Examples (a) and (b) to Note, Proposed Rule 14a–2(b)(1).

economic interest would be imputed under the proposed rule to persons proposing an alternative transaction who solicit against a merger or other extraordinary transaction approved by the registrant's board of directors.[36] Similarly, a person who receives any commission, fee or other form of remuneration for preparation or transmission of a communication from any person involved or otherwise interested in the outcome of a matter subject to securityholder action, except a recipient of such communication, would be ineligible to rely upon the proposed exemption.[37] To illustrate, this exemption would not apply to a money manager or broker-dealer who is directly or indirectly induced by any person soliciting proxies, consents or authorizations, whether it be the registrant or an insurgent, to express support for a particular position to beneficial owners of the registrant's securities in exchange for the award or withdrawal of business. Nor would it apply to a person deemed to have a material economic interest in an investment company, such as the fund's investment adviser.[38]

In addition to not having a material economic interest, a person claiming "disinterested" status under the proposed exemption could not seek directly the power to act for a securityholder of the registrant, whether through a request for that holder's proxy to vote its securities, or the provision of the securityholder's consent or authorization for delivery to the registrant. Nor would a person be considered disinterested within the meaning of the proposed exemption if he sought to evade proxy filing and disclosure requirements by soliciting indirectly through another person the power to act on behalf of a securityholder. Moreover, any person who purports to engage in an exempt solicitation with respect to a particular meeting or subject matter of securityholder action pursuant to proposed Rule 14a–2(b)(1) could not continue to rely on the proposed exemption through the assertion of a change in purpose or intent should he subsequently solicit authority to act on behalf of securityholders concerning the same meeting or subject matter. Because the earlier solicitation would not qualify for exempt treatment under such circumstances, any failure to comply with the full panoply of the proxy rules as to that solicitation would be deemed a proxy violation.

As proposed, the amended rule would permit a securityholder that has procured the inclusion of a proposal in the registrant's proxy statement pursuant to Rule 14a–8 to rely on the disinterested person exemption, provided this securityholder was not soliciting its own form of proxy and had no material economic interest in the outcome of the vote. Inclusion of the securityholder's proposal in the registrant's form of proxy would not constitute a solicitation by the proponent of the power to act for other securityholders. The Commission requests comment on whether a securityholder whose Rule 14a–8 proposal is carried in the registrant's proxy statement should fall outside the ambit of the proposed exemption and be required to comply fully with all proxy filing and disclosure requirements.

Like the solicitations exempted by the existing provisions of Rule 14a–2(b), solicitations exempt from the proxy disclosure and filing provisions under the proposed rule would be subject to the Rule 14a–9 requirement that the communications in question not be materially false or misleading. This proposed exemption otherwise would not restrict in any manner either the medium [39] or content of a communication with securityholders.

Along with "disinterested" securityholders, there would be other categories of persons or entities eligible to rely on the proposed exemption. One such category would encompass organizations or associations comprised of securityholders or issuers that exchange information with members regarding such matters of common concern as proxy voting positions or views on corporate governance policy. Another category would be providers of shareholder advisory services,[40] including organizations offering proxy voting information or recommendations, to the extent these providers do not receive a fee, commission or other form of consideration from any client conditional upon the disposition of the vote. Comment is requested on the appropriateness of coverage of each of the above categories, indicating whether and under what circumstances the interest of one member in a solicitation should disqualify the group from relying on the exemption. In particular, comment is requested as to whether the proposed exemption should be available only to securityholders.

Proposed Rule 14a–2(b)(1) is intended to achieve an appropriate balance between securityholders' interest in gaining access to reliable, truthful information that would facilitate voting decisionmaking, and the countervailing need to ensure that all materials disseminated to securityholders that may influence their vote will be free of fraud. Commenters are requested to address whether the proposed exemption would strike the desired balance. What activities that would be exempted by the new rule should be subject to some or all of the Commission's proxy rules, and why? Are there alternative, more appropriate means of facilitating securityholder communications?

Some have contended that all securityholders, including those not directly solicited, should be aware of and have access to the soliciting statements of any person engaged in a solicitation. Both securityholders and registrants, they argue, would be better served by requiring all soliciting efforts to be disclosed to the public, thereby providing more information to the securityholder body and permitting the substance of the solicitations to be reviewed by and responded to by the other persons involved in the solicitations.

Under the current proxy rules, a person engaged in a solicitation is not required to solicit all securityholders.[41]

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[36] See Example (b) to Note, Proposed Rule 14a–2(b)(1).

[37] See Example (d) to Note, Proposed Rule 14a–2(b)(1).

[38] Paragraph (c) of the Note to proposed Rule 14a–2(b)(1) would specifically state that an "interested person" of an investment company registered under the Investment Company Act of 1940 ("Investment Company Act") could not claim to be a disinterested person. See section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a–2(a)(19)). Interested persons include, among others, an investment company's investment adviser, principal underwriter, and legal counsel, any broker-dealer, and any "affiliated person" of the investment company, its investment adviser or principal underwriter. See section 2(a)(3) of the Investment Company Act (15 U.S.C 80a–2(a)(3)).

[39] Permissible communication methods under the proposed exemption thus would include, but would not be limited to, direct written communications with shareholders, whether by letter, newspaper advertisements or other print media. Also covered would be scripts of speeches or presentations made to the public at large or specifically to shareholders through broadcast or other electronic media, such as television, radio or video. See Rule 14a–6(h) (17 CFR 240.14a–6(h)).

[40] One such organization is the Investor Responsibility Research Center, a non-profit organization that furnishes analyses of general or specific proxy proposals to clients, but do not render voting advice. For-profit organizations that provide such analyses, as well as proxy voting advice, to clients include Institutional Shareholders Services, Inc. and Analysis Group.

[41] As discussed *supra* at n. 15, even where no proxies are solicited in respect of an annual or other securityholders' meeting, the registrant must file and disseminate an information statement on Schedule 14C with disclosure substantially equivalent to that mandated in Schedule 14A.

However, the required public filing of all soliciting materials, together with the mandated proxy statement, makes publicly available extensive information concerning the solicitation. Oral solicitations are permitted, and generally are not subject to any filing requirement,[42] except for the mandated proxy statement.

The Commission requests comment on an alternative to proposed Rule 14a–2(b)(1) that would permit disinterested persons, who by definition would not be seeking a proxy, to engage in a solicitation without having to prepare a proxy statement, provided that all written materials used in the solicitation are filed with or submitted to the Commission, or otherwise made publicly available at the time they are first used to solicit. If this approach were followed, should a proxy statement be required to be filed with the Commission for public notice purposes, but not required to be distributed to securityholders? Should a more limited form of notice identifying the person engaged in the solicitation, the size of the solicitation and a brief description of the substance of the solicitation be required? Would such an approach lead to greater reliance on oral rather than written solicitation, and if so, what additional safeguards should be imposed by the rules?

B. Preliminary Filing and Staff Review of Proxy Solicitation Materials

1. Background

As noted, Rule 14a–6 requires, with narrow exceptions for certain registrant "plain vanilla" soliciting materials, that proxy statements and additional proxy soliciting materials relating to contested solicitations be filed in non-public, preliminary form with the Commission prior to delivery to shareholders.[43] Similarly, present Rules 14a–11(e) and 14a–12 require that solicitation materials disseminated in advance of the written proxy statement be filed in preliminary form five business days in advance of dissemination.[44] Additional soliciting material issued after dissemination of a proxy statement, as well as personal soliciting material committed to writing, are subject to two and five business day preliminary filing requirements, respectively.[45] Finally, Schedules 14B, while filed in definitive form, must be on file with the Commission five business days prior to the commencement of an insurgent's solicitation with respect to an election contest.[46] Pursuant to Rule 14a–6(f),[47] all preliminary proxy materials are not available for public inspection until definitive copies are filed.

The Commission is proposing to eliminate preliminary filing requirements with respect to all soliciting materials and Schedules 14B, other than the proxy statement and form of proxy (unless currently permitted to be filed only in definitive form). Instead, all soliciting materials would be filed with, or mailed for filing to, the Commission simultaneously with their use.[48] Moreover, the Commission proposes to eliminate the non-public filing status of the remaining preliminary proxy materials.

The Commission's imposition by rule of a pre-dissemination filing requirement, particularly with respect to election contests, has been challenged as unnecessary to protect shareholders from false or misleading statements and disruptive of the solicitation process. The USA Petition asserts that this requirement violates the First Amendment's guarantee of free speech, even if proxy solicitation material is considered commercial speech, since the regulatory scheme is more extensive than necessary.[49] While the ABA endorses the concept of preliminary staff review of proxy soliciting materials containing relevant financial information, it contends that "soliciting materials relating to election contests may not require preliminary review because they are subject to the adverse party's scrutiny."[50] NL Industries ("NL") likewise advocates elimination of the preliminary filing review procedure, but only in contested situations. Such reform is necessary, in its estimation, to minimize the advantage afforded management by the 1987 amendment to Rule 14a–6 dispensing with preliminary review of certain "plain vanilla" filings.[51] CalPERS has challenged on fairness grounds preliminary staff review of independent securityholder soliciting materials in support of Rule 14a–8 proposals included in management's proxy materials, arguing that registrant materials containing these proposals are not subject to such review.[52]

Finally, the preliminary review process has been the object of considerable debate in Congressional hearings. Witnesses affiliated with management and insurgent groups alike have criticized the process as interfering unduly with effective communication with shareholders.[53]

2. Proposed Amendments

The Commission is proposing to amend Rules 14a–11 and 14a–12 to eliminate the requirement that proxy soliciting materials permitted to be disseminated prior to the furnishing of the proxy statement must be filed in preliminary form five business days before delivery to securityholders; such materials thus would be required to be

[42] While there is no obligation to commit oral solicitations or instructions to writing, Rule 14a–6(d) (17 CFR 14a–6(d)) mandates that, if so committed, such written material or instructions be filed at least five calendar days before their delivery to persons who will conduct the personal soliciting program.

[43] Under Rule 14a–6(a) (17 CFR 240.14a–6(a)), proxy statements must be on file 10 calendar days prior to the dissemination of definitive materials, unless the staff by delegated authority accelerates the period. Additional soliciting materials must be on file two business days prior to dissemination pursuant to Rule 14a–6(b) (17 CFR 240.14a–6(b)). No preliminary filings are required with respect to speeches, press releases or scripts. Rule 14a–6(h) (17 CFR 240.14a–6(h)).

[44] Materials disseminated in advance of the proxy statement must be on file five business days prior to dissemination, unless accelerated. Rule 14a–11(e) (17 CFR 240.14a–11(e)) (election contests) and Rule 14a–12(b) (17 CFR 240.14a–12(b)) (other).

[45] Additional soliciting material is any material "relating to the same meeting or subject matter furnished to security holders subsequent to the proxy statement * * *," which material must be filed with the Commission at least two business days prior to dissemination to security holders. Rule 14a–6(b). Personal solicitation material generally consists of written material or instructions that form the basis of a program of personal, typically oral solicitation of securityholders, and must be filed with the Commission at least five calendar days before use. Rule 14a–6(d).

[46] 17 CFR 240.14a–102. While an insurgent's Schedule 14B must be on file five business days prior to dissemination of any contested soliciting material relating to the election of directors, the registrant only need file its Schedules 14B within five business days after a dissemination subject to the rule. See Rule 14a–11(c) (17 CFR 240.14a–11(c)).

[47] 17 CFR 240.14a–6(f).

[48] This is consistent with current filing requirements for definitive materials. See, e.g., Rule 14a–6(c) (17 CFR 240.14a–6(c)).

[49] *USA Petition, supra,* at 36, citing *Central Hudson Gas & Electric Corp.* v. *Public Service Commission,* 447 U.S. 557 (1980).

[50] ABA Letter, supra, at 26.

[51] Letter from NL Industries, Inc., to Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated Aug. 8, 1990, at 7. NL cites its proxy contest with Lockheed, where management mailed its proxy statement in definitive form without prefiling merely by omitting reference to NL's announcement of an intention to conduct an opposing solicitation for the election of directors. *Id.* The staff has not objected to that tactic so long as the failure to refer to the opposing solicitation does not render the proxy materials misleading.

[52] CalPERS Letter, *supra,* at 21. Accord Letter from the College Retirement Equities Fund, to Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated Nov. 8, 1990, at 6.

[53] See, e.g., Corporate Proxy Voting System, Hearing before the Subcomm. on Telecommunications and Finance of the Comm. on Energy and Commerce, 101st Cong., 1st Sess. at 54–57 (Aug. 2, 1989).

filed only in definitive form.[54] With respect to contested solicitations relating to the election of directors subject to Rule 14a–11, the Commission is proposing to eliminate the requirement that an insurgent's Schedule 14B be on file prior to commencement of a solicitation subject to the rule. Specifically, the Schedule 14B would be required to be on file within five business days following the commencement of a Rule 14a–11 solicitation or the filing of the preliminary proxy statement, whichever is earlier. As discussed, these amendments are intended to streamline the solicitation process by reducing costs and alleviating timing concerns for all persons engaged in a solicitation, while assuring that full and fair disclosure is made to facilitate informed securityholder voting.

Comment is requested on the costs and benefits of the proposed approach. Should the requirement for filing Schedules 14B be eliminated, with the disclosure called for by that schedule to appear in the proxy statement? Commenters also should discuss whether Rule 14a–12 should be amended to permit its use in connection with any solicitation.

The Commission also is proposing to amend Rule 14a–6 to allow all "additional" soliciting materials, or material used subsequent to dissemination of the written proxy statement,[55] to be filed only in definitive form at the time of dissemination. Personal solicitation materials subject to Rules 14a–6(d) and 14a–6(h) similarly would be required to be filed only in definitive form at the time of their dissemination or other use.[56] Commenters should address whether pre-filing and review of such materials are needed.

The proposed rules would not rescind existing preliminary filing and staff review requirements relating to the written proxy statement and form of proxy. As in the case of roll-ups, proxy statements may be subject to extensive staff review and comment where they involve complex transactions, or transactions that affect substantially the rights of shareholders or limited partners. In addition, the proxy statement and form of proxy are subject to numerous technical and compliance requirements that could affect the validity of the proxy and therefore lead to disenfranchisement of securityholders, particularly with respect to issues arising under Rule 14a–4 or state-law issues as to which the staff would seek additional disclosure during the review and comment process. Where proxy statements are required to disclose financial information, including audited financial statements, the staff often provides detailed accounting comments. The Commission is soliciting comment, however, as to whether there are additional classes of proxy statements that appropriately could be excluded from the preliminary filing and review process. Commenters also are requested to address the fundamental question whether preliminary filing should be required in any case. In the event preliminary filing of proxy statements is not required, what would be the effect on the process of post-dissemination review should the Commission adopt a procedure, similar to the tender offer model, under which the staff comments on materials contemporaneously with the use thereof by registrants or insurgents to solicit securityholder proxies?

Although the proposals would not dispense with preliminary filing of the written proxy statement or form of proxy, the proposed amendments would eliminate the non-public treatment of preliminary proxy statements. Under the proposed approach, preliminary proxy materials would be treated in a manner similar to registration statements required by section 5 of the Securities Act of 1933.[57] Accordingly, the preliminary filing requirement would permit the use of the preliminary form of the proxy statement, but would bar the transmittal or use of the form of proxy during the ten-day period or a shorter period in the case of earlier clearance. The Commission requests comment on the likelihood that soliciting persons would choose to make the general distribution of the proxy statement following staff review and clearance of the form of proxy.

Specific comment is sought with respect to the appropriateness of eliminating preliminary filing and confidential treatment of proxy statements and other soliciting materials, alone or in combination, in the context of the following types of solicitations.

a. *Election Contests and Other Contested Solicitations.* Contested solicitations relating to the election of directors or proposals sponsored by management or shareholders are argued by some to present the most obvious case for elimination of preliminary filing and review requirements, since the adversarial nature of the transaction itself is believed to serve as a policing mechanism. Prompt and effective communication of opposing views is critical to success in such solicitations, and the parties frequently regard the Commission's review processes as favoring one side over the other. Counsel for the competing camps may be in the best position to monitor not only the adequacy and truthfulness of its client's materials, in order to avoid the undesirable consequences of a court or Commission finding that the materials are misleading, but also the opponent's materials. A well-established private right of action under the proxy rules,[58] coupled with the threat of Commission enforcement action, poses a significant deterrent to misconduct given judicial sensitivity to challenges that proxy materials may have been materially false or misleading.[59]

Others have argued, however, that the preliminary review process exerts a beneficial "calming" effect on participants when emotions in a proxy contest become heated, and thus prevents the dissemination of materials that contain objectionable statements. Election contests often present the most difficult issues relating to bona fide nominees, the form of proxy and the scope of discretionary authority permissible under the proxy rules, and thus often engender significant staff comments on these issues. Commenters are invited to address the merits of each of the opposing arguments.

b. *Securityholder Proposals Subject to Rule 14a–8.* The Commission in addition is considering whether non-exempt shareholder soliciting material in support of proposals included in management's proxy materials pursuant to Rule 14a–8 should be subject to

[54] For this purpose, these materials may be filed or mailed for filing on the requisite date as under the existing proxy rules. See *supra* n. 48 and accompanying text.

[55] See Rule 14a–6(b) (17 CFR 240.14a–6(b)).

[56] As discussed *supra* at nn. 42 and 45, personal soliciting materials would include written materials or instructions forming the basis for personal, typically oral solicitations, which materials or instructions must be filed at least five calendar days before their delivery to persons who will conduct such solicitation under present Rule 14a–6(d). Current Rule 14a–6(h) requires the filing or mailing for filing with the Commission of soliciting materials in the form of speeches, press releases and radio or television scripts no later than the date of their use or publication.

[57] 15 U.S.C. 77e.

[58] See *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438 (1976); *Mills* v. *Electric Auto Lite Co.*, 396 U.S. 375 (1970); *J.I. Case Co.* v. *Borak*, 377 U.S. 426 (1964).

[59] See, *e.g.*, *International Broadcasting Corporation* v. *Turner*, 734 F. Supp. 383 (D. Minn. 1990); *Kaufman* v. *The Cooper Companies*, 719 F. Supp. 174 (S.D.N.Y. 1989); *The Gillette Company* v. *RB Partners*, 693 F. Supp. 1266 (D. Mass. 1988); *Dynamics Corporation of America* v. *CTS Corporation*, (1986) Fed. Sec. L. Rep. (CCH) ¶ 92,765 (N.D. Ill. 1986).

preliminary filing and review by the staff regardless of whether the solicitation is opposed by management. One correspondent has pointed to perceived inequities created by the 1987 amendments to Rule 14a–8, which enable an issuer to comment in opposition to a shareholder proposal incorporated in management materials, yet compel any proponent who wishes to solicit independently to file separate soliciting materials in preliminary form and wait 10 days before dissemination.[60] While seeking comment on this issue, the Commission recognizes that solicitations in support of a Rule 14a–8 proposal normally would be exempt under the proposed "disinterested person" exemption unless the securityholder proponent sent out its own proxy. Thus, in light of the proposed disinterested person exemption, solicitations in support of a Rule 14a–8 proposal may be subject to filing requirements in the uncommon situation where a Rule 14a–8 proponent would seek power from other securityholders to act as proxies, or otherwise would have a disqualifying financial interest in the solicitation.

Commenters' views are requested as to the relative costs and benefits of adding proponent soliciting materials to the category of "plain vanilla" filings contained in Rule 14a–6(a). Should a distinction be drawn in this regard between the proponent's proxy statement and any additional soliciting materials that may be circulated?

c. Mergers and Other Extraordinary Transactions. Mergers, acquisitions and other extraordinary transactions submitted to a securityholder vote generally have significant implications for securityholders, as illustrated by limited partnership roll-ups typically characterized by the imposition of supermajority vote requirements for removal of management, management conflicts of interest arising from substantial increases in compensation and other benefits accruing to the roll-up sponsors and their affiliates as a result of the roll-up, and the absence of state-law dissenters' rights. Detailed, understandable proxy disclosure therefore normally is required of the terms of a proposed extraordinary transaction, and its effects on securityholders' rights, coupled with the interest of management in its consummation, to enable securityholders to formulate informed voting decisions. Given the resulting complexity of this disclosure, which often includes historic and in many instances pro forma financial statements along with the extensive information mandated with respect to the rights of securityholders and the interests of management, some have argued that preliminary proxy filing and staff review requirements applicable to solicitations in connection with mergers, acquisitions and other extraordinary transactions involving corporations and limited partnerships, including registered exchange tender offers, would be appropriate. In many cases, these proxy statements are part of a registration statement filed in accordance with section 5 of the Securities Act of 1933.

Comment is sought as to whether there are securityholder interests that would override the benefits attendant to pre-dissemination filing and staff review. Should non-exempt solicitations in opposition to a merger proposal likewise be subject to preliminary filing and staff review requirements?

C. Access to Lists of Securityholders

An important concern raised by holders of corporate equity and limited partnership interests alike is the difficulty often encountered in obtaining access to securityholder lists that would permit the solicitation of fellow investors on matters subject to a securityholder vote. The ability to reach other securityholders is a key factor in effective communication with securityholders by any other securityholder who may wish to engage in a proxy solicitation. The Commission is proposing to amend Rule 14a–7 to eliminate the registrant's existing choice to mail a requesting securityholder's proxy materials rather than produce a securityholder list upon request, and to transfer that choice to the requesting securityholder. Moreover, the proposed amendment would expand the scope of the list to encompass the names, addresses and securities holdings of both record and non-objecting beneficial owners ("NOBOs") or consenting beneficial owners ("COBOs").[61]

By vesting in the registrant discretion to withhold a securityholder list through the exercise of its right to mail, Rule 14a–7 in its present form operates to confer on the registrant's management significant control over the timing and effectiveness of a securityholder's solicitation. Soliciting securityholders generally prefer use of a securityholder list to permit them to control the timing of their solicitation, and to identify and communicate directly with other securityholders. Since the choice of whether to produce a list or mail under current Rule 14a–7 resides exclusively with the registrant, those securityholders who wish to employ the list to conduct a personal solicitation normally must pursue in the courts any state statutory or common-law rights thereto.[62] Added delay and cost typically associated with seeking a state-law judicial remedy under the often significant time constraints of a proxy solicitation undermine the ability of the soliciting person to provide securityholders with information bearing on their proxy voting decision.[63]

[60] CalPERS Letter, *supra*, at 21

[61] Under the Commission's shareholder communications rules, brokers, banks and other recordholders of stock for beneficial owners must compile a NOBO list at an issuer's request. See Rule 14b–1(c) (17 CFR 240.14b–1(c)). Bank recordholders also must include the names of COBOs, or those persons holding securities in bank customer accounts opened before December 28, 1986, who consent to disclosure of their beneficial ownership of the issuer's securities. See Rule 14b–2(a) (17 CFR 240.14b–2(a)). In 1979, the Commission indicated that "the question of non-issuer access to securities position listings * * * is best addressed in the context of the Commission's tender offer and proxy rules rather than in general provisions such as (then) proposed Rule 17Ad–8." Exchange Act Release No. 16443 (Dec. 20, 1979).

[62] CalPERS Letter, *supra*, at 8 (this state pension fund was advised by a portfolio company that the only means of obtaining a list would be through litigation). The likelihood of the issuer's election to mail forces soliciting securityholders to rely principally on state law to secure a list. See *Aranow, supra*, at 9, 38–39; Black, *supra*, at 542; Division of Corporation Finance Proxy Rules Reference Book at 100 (1980).

[63] A significant number of the ABA commenters point out that, while stockholder lists are generally available under state law, they often can be obtained only "after court challenges involving considerable costs and delays * * *" ABA Letter, *supra*, at 23 (citations omitted). See, *e.g., Sadler* v. *NCR Corp.*, 928 F.2d 48, 50 (2d Cir. 1991) (period of approximately two months elapsed between securityholder demand for list to permit direct communication with securityholders in ongoing joint proxy contest and tender offer, and federal appellate court's resolution of issue on the merits on registrant's appeal from district court's order that list of securityholders, including NOBOs, be provided to requesting securityholders). See *supra* n. 62. Other recent contests for control of public companies have been characterized by litigation, commenced either by the requesting insurgent/offeror or a resistant issuer, arising from issuer refusals to provide a securityholder list to a challenger. See, *e.g., Gramercy Realty Associates* v. *Firecom, Inc.*, No. 08510/91 (N.Y. Sup. Ct., Order entered June 11, 1991) (court granted insurgents' application for order directing issuer to produce stockholder list and other corporate documents under New York law; action filed on May 6 following issuer's denial of April 26 demand for list and other documents); *Sears, Roebuck & Co.* v. *Monks*, No. 5915/91 (N.Y. Sup. Ct., Cplt. filed March 13, 1991) (action by issuer for declaratory judgment that insurgent seeking single board seat not entitled to list under New York law; dismissed without prejudice following election of management's slate at annual meeting); *Schneider, S.A.* v. *Square D Co.*, No. 11993 (Del. Ch., Cplt. filed March 6, 1991) (insurgent/offeror sued for stockholder list and related materials in furtherance of combined proxy solicitation and tender offer; stipulated settlement

Continued

In this regard, little progress appears to have been made since the Commission sought public comment in 1977 on whether it "(s)hould amend the proxy rules to require issuers to furnish shareholders with shareholder lists upon request."[64] Responding in the affirmative to this question, one commentator aptly described securityholders' recurring dilemma in testimony before the Commission:

Of course, the shareholder has a theoretical right to a shareholder list under state law, but * * * management uses corporate funds to fight these requests routinely. And unless the court is extremely expeditious, by the time you get the shareholder list under state law, you may have lost a lot of valuable time.[65]

Similar concerns prompted the Commission's Tender Offer Advisory Committee to recommend in 1983 that the proxy (and tender offer) rules be amended to compel prompt registrant provision to any person who has announced a proxy contest (or tender offer), at his expense, of a shareholder list and clearinghouse security position listings within five calendar days.[66] In 1984, the Commission endorsed this recommendation in testimony before Congress.[67] Since that time, the increasing prevalence of supermajority voting provisions in the corporate and limited partnership sectors (roll-ups) has made expeditious access to a list of both record and beneficial holders of even greater importance to an insurgent.[68]

Pursuant to its section 14(a) mandate to safeguard the securityholder franchise by assuring its effective exercise through the proxy voting process, the Commission is proposing to permit the requesting securityholder to decide whether it prefers access to a securityholder list or a registrant mailing of the requestor's soliciting materials. More specifically, at the written request of any holder of securities entitled to vote on the subject matter or meeting that forms the basis for an actual or intended solicitation, registrants that are soliciting or intend to solicit proxies with respect to the same subject or meeting would be required under the proposed amendment either to mail the requestor's proxy soliciting materials in accordance with Rule 14a–7(b), or, at the requestor's option, to provide the latter, pursuant to proposed Rule 14a–7(c), within five business days of receipt of such request with a reasonably current list of the names, addresses and, by contrast with the existing rule, security positions of each securityholder thus identified. As under the present rule, the requesting securityholder would be obligated to defray reasonable expenses incurred by the registrant in mailing or furnishing the list.

The proposed amendment would specify that the list could be used solely for the purpose of engaging in a solicitation of securityholders with respect to the subject matter or meeting for which the registrant is soliciting or intends to solicit. The types of permissible solicitations would include those exempt from the filing and disclosure requirements of the proxy rules under Rule 14a–2(b). However, if the registrant has actually commenced a solicitation, a list obtained pursuant to Rule 14a–7 could also be used for the purpose of communicating with other securityholders in response to the solicitation, even though the communication may not constitute a solicitation; for example, to "test the waters" or gauge the interest of other securityholders in determining whether to mount a solicitation in opposition to the registrant's management. The requestor would be required to represent that it will use the information solely for such purposes and will maintain the confidentiality of the information. Failure to abide by either representation would constitute a violation of the proxy rules.

Commenters should discuss the relative costs and benefits to both registrants and securityholders of the proposed change in regulatory approach, particularly with respect to shifting to the requesting securityholder the right to elect a securityholder list and conduct its own mailing, and the requirement that the amount of securities held by each securityholder be disclosed in the list. Does the five-business-day compliance period afford registrants sufficient time to respond to a securityholder's request? Discuss the propriety of limiting a requesting securityholder's use to the stated purpose, and any mechanisms for enforcing any such limitation. Should a minimum share ownership and/or holding period requirement, similar to that set forth in Rule 14a–8, be imposed? Should access to a securityholder list be limited to recordholders, or should it be expanded to cover beneficial owners?

To ensure that the securityholder list is reasonably current, should the list include all updating materials such as daily transfer sheets that are in or come into the possession of the registrant throughout the pendency of a

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entered into two days later mandated list production); *Rabinovitz* v. *Instron Corp.*, MA 91–10929 (D. Mass., Cplt. filed March 28, 1991) (insurgent sued for injunctive relief, alleging violations of Regulation 14A and seeking production of NOBO list under state law; court ordered issuer to commence preparation of list pending decision on merits, list thereafter furnished pursuant to stipulated settlement on April 4, 1991); *Cede & Co. and Calvary Partners, LP* v. *Diceon Electronics, Inc.*, CA No. 11860 (Del. Ch., Cplt. filed Dec. 7, 1990) (insurgent sued to obtain list in connection with related proxy contest and tender offer; following stipulated settlement and order requiring issuer production of list, insurgent renewed request for injunctive relief on ground that issuer failed to comply with order to turn over NOBO list; pursuant to settlement reached in early January 1991, issuer agreed to adjourn meeting for seven days and to stipulate that all proxies received by insurgent prior to new meeting date would be valid); *First City Diversified, Inc.* v. *Armstrong World Indus., Inc.*, No. 90–1578 (E.D. Pa., March 7, 1990) (ordering issuer to provide list to insurgents under Pennsylvania law, while enjoining use thereof to communicate with securityholders on proposed charter amendments pending further order), *rev'd*, No. 1198 (3d Cir., April 5, 1990) (overturning lower court's order, finding that erroneous as a matter of law). Limited partners seeking access to a list of limited partners similarly have been compelled to resort to the courts when general partners have refused to supply the list upon request. See Bigelow Testimony, *supra*, at 7 (limited partner testified that "I found that even after I had paid approximately $1,500.00 to receive a list of investors to which we are entitled without any equivocation by the partnership agreement it still took 4 months and a law suit with additional expense to merely get an investor list."); see also *supra* n. 6 and accompanying text.

[64] See Exchange Act Release No. 13901 (Aug. 29, 1977) (42 FR 44860) ("(s)hould the Commission amend its proxy rules to require issuers to provide shareholders with shareholder lists upon request? If so, under what circumstances and subject to what conditions should shareholder lists be provided?").

[65] Testimony of Melvin A. Eisenberg, Professor of Law, UCLA-Berkeley, Public Hearing Before the Securities and Exchange Commission, In re Re-examination of Rules Relating to Shareholder Participation in Corporate Electoral Process and Corporate Governance Generally, at Tr. 1637 (Los Angeles, California, Oct. 14, 1977) (S7–693). See Division of Corporation Finance, Securities and Exchange Commission, Staff Report on Corporate Accountability to the Senate Committee on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess. 127–28 (Comm. Print 1980). In this report, the staff suggested that "(i)t may be appropriate * * * to give staff consideration to requiring (shareholder) access to the list, in certain circumstances, as opposed to giving the choice to the issuer. This would address the concerns of others (such as Professor Eisenberg) who thought Rule 14a–7 should be amended to give the shareholder, rather than the issuer, the option of obtaining a list or having management mail the material."). *Id.* at 129–30 (footnote omitted).

[66] U.S. Securities and Exchange Commission, Advisory Committee on Tender Offers, Report of Recommendations, Recommendations 21 and 22 (July 8, 1983), as endorsed in Congressional testimony of the Commission. See Statement of John S.R. Shad, Chairman, Securities and Exchange Commission, Hearing Before the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Energy and Commerce Committee at 18 (March 28, 1984).

[67] See *ibid.*

[68] For example, the Court of Appeals for the Second Circuit highlighted the significant adverse impact of NCR's 80% requirement, which had the effect of treating non-votes as "no" votes. In imposing the requirement that the issuer prepare and turn over a NOBO list to AT&T, the insurgent, the court stated that to deny the insurgent the opportunity to solicit beneficial holders was contrary to the equal access purpose of the New York foreign corporation list statute. *NCR Corp.*, 928 F.2d at 53.

solicitation? Should a breakdown of all depositary institution lists (CEDE breakdowns) be mandated? Discuss the appropriateness of requiring the registrant to supply the list, upon request, in the form of a magnetic computer tape and any related computer data processing as would be necessary for the requestor to make use of the tape, alone or in conjunction with a printout of the tape for verification purposes.

Unlike current Rule 14a–7, the securityholder list contemplated under the revised rule would include the prescribed identifying information not only for all recordholders, as now required, but also in specified circumstances for all beneficial owners who do not object (or who consent) to disclosure of such information in connection with the preparation for requesting registrants of lists of NOBOs (and/or COBOs) by brokers, dealers and banks in accordance with the Commission's shareholder communications rules.[69] Even though the federal proxy rules and applicable state-law voting requirements operate to require registrants to mail their written proxy statements indirectly to beneficial owners through the medium of the recordholders, rather than directly in reliance upon the NOBO (and/or COBO) list, registrants nevertheless may use this list to engage in personal solicitations of beneficial owners. The proposed amendments would extend to soliciting securityholders the same ability to communicate with beneficial owners.[70]

Under the proposed rules, beneficial ownership information would be mandated upon a securityholder's request where that information is either in the possession of, or reasonably available to, the registrant. As noted, the requesting securityholder would be required to use the beneficial ownership information solely to solicit or communicate with other securityholders and would be required to maintain the confidentiality of the information. If the registrant had not obtained the NOBO and/or COBO list at the time the request is received, the requestor would be required to share the costs of reimbursing brokers, dealers, banks and other recordholders imposed on the registrant by section 14a–13(b)(5).[71]

Comment is requested on the necessity or appropriateness of the proposal to require disclosure of NOBO (and COBO) information in securityholder lists. Is it necessary or appropriate to require a registrant to procure the preparation of a list containing such information if none has been obtained? Under what circumstances is a NOBO list "reasonably obtainable"? [72] Should the securityholder who obtains a list of beneficial owners be required to mail proxy materials though the recordholders, similar to the requirement imposed on the registrant by Rule 14a–13(b)?

The Commission is considering a possible alternative to the proposed revision that would leave vested in the registrant the decision to mail if it bears the cost of mailing a qualified requestor's soliciting materials. Commenters should address the costs and benefits of this alternative.

Like the current rule, the proposed amendment would provide a securityholder the right to a list or a mailing only where the registrant is soliciting or intends to solicit on the same subject matter or for the same meeting. It does not provide a general right to the securityholder list, but seeks to define the conditions for the solicitation of proxies pursuant to section 14(a) of the Exchange Act. The Commission is of the opinion that the Supreme Court's decision in *CTS Corp.* v. *Dynamics Corp. of America*,[73] does not affect the appropriateness of the Commission's proposal to adopt these amendments to Rule 14a–7. The Commission requests commenters' views on the appropriateness of the Commission's proposal.

III. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the Commission's proxy rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[74]

IV. Cost-Benefit Analysis

To evaluate the benefits and cost associated with the proposed amendments to Exchange Act Rules 14a–2(b), 14a–6, 14a–7, 14a–11 and 14a–12, the Commission requests commenters to provide views and data as to the costs and benefits associated with amending the filing requirements for proxy soliciting materials. The proposed "disinterested person" exemption, along with the proposed elimination of requirements to file preliminary proxy statements in specified circumstances should reduce some costs for those soliciting persons who meet the requirements of the proposed amendments.

The Commission also requests that commenters provide views and data concerning the costs and benefits of amending the securityholder list provision embodied in Rule 14a–7. The proposed modification of Rule 14a–7 may impose some additional costs on registrants.

Comments also are requested on the effects of all proposals on the costs to be incurred by small entities.

V. Initial Regulatory Flexibility Act Analysis

The initial regulatory flexibility analysis concerns proposed amendments to Exchange Act Rules

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[69] In the past, the Commission has considered amending Rule 14a–7 (and 14d–5 with respect to tender offers (17 CFR 240.14d–5)) to provide securityholder access, albeit at the issuer's continued option, to NOBO lists in a proxy or tender offer solicitation context. See Exchange Act Release No. 22533 at n.17 (Oct. 15, 1985) (50 FR 42672); Exchange Act Release No. 20021 at n.18 (July 28, 1983) (48 FR 35082). No rulemaking action was taken.

[70] See Brown, The Shareholder Communication Rules and the Securities and Exchange Commission: An Exercise in Regulatory Utility or Futility?, 13 J. Corp. Law 683, 775–76 (1988) ("Without an effective means of communication (with NOBOs), insurgents may be unable to induce beneficial owners to return proxies. The difficulty could prove outcome determinative. Moreover, denying insurgents the ability to communicate directly not only provides management with an advantage in any contest, but also works to the disadvantage of shareholders by denying them timely information"). Beneficial ownership information may be particularly critical to an insurgent's ability to wage a successful proxy fight in light of the growing phenomenon of corporate and limited partnership (roll-up) supermajority provisions that render of vital importance each beneficial owner's vote. See, e.g., *NCR Corp.*, 928 F.2d at 53.

[71] 17 CFR 240.14a–13(b).

[72] Cf. NCR Corp., 928 F.2d at 53 (in holding that New York law required the registrant to prepare a NOBO list where not otherwise procured by or in the possession of registrant, the Second Circuit noted that compilation of beneficial ownership information is a relatively simple, mechanical task that may take only a few days).

[73] 481 U.S. 69 (1987). *Cf. Sadler* v. *NCR Corp.*, 928 F.2d at 55 (in determining whether New York's foreign corporation list statute was unconstitutional as applied to a Maryland corporation, the court stated that "[a]ccess to stockholder lists is a recognized exception to the internal affairs doctrine as a matter of corporate law and conflicts of law * * *.")

[74] 15 U.S.C. 78w(a).

14a–2(b),[75] 14a–6,[76] 14a–7,[77] 14a–11[78] and 14a–12.[79] The analysis has been prepared by the Commission in accordance with The Regulatory Flexibility Act.[80]

A. Reasons for and Objectives of the Proposals

A proposed amendment to Rule 14a–2(b)(1) would create a new exemption for solicitations by persons not seeking authority to act as a proxy for securityholders. The objective of this amendment is to provide an exemption from all proxy rules except the antifraud provision, Rule 14a–9, to "disinterested" persons, or persons who do not have a material economic interest in the outcome of a matter subject to securityholder action pursuant to a solicitation of proxies, consents or authorizations, other than as a securityholder, and who do not seek a form of proxy, consent or authorization from securityholders to vote their shares as proxies.

Proposed amendments to Rules 14a–11 and 14a–12 would eliminate the requirement that pre-proxy statement solicitation materials be filed in preliminary, non-public form five business days in advance of dissemination, and would require only that such soliciting materials be filed with the Commission in definitive form contemporaneously with their dissemination to securityholders, and that the soliciting party simultaneously file a Schedule 14B. The purpose of the amendments is to reduce the costs and other burdens incurred by persons engaged in non-exempt solicitations, subject to the Rule 14a–9 proscriptions against false and misleading statements, in connection with solicitations currently permitted before the written proxy statement and form of proxy are filed with the Commission and disseminated to shareholders.

Currently, all proxy statements and forms of proxy are required to be filed in preliminary, non-public form with the Commission pursuant to Rule 14a–6. The proposed amendments to this rule, if adopted, would reduce the instances in which proxy soliciting material would be required to be filed in preliminary form and further would eliminate the confidential treatment of all proxy materials, whether filed in preliminary or definitive form. The objective of the proposed amendments is to enhance disclosure of material information to securityholders while decreasing burdens on registrants and other soliciting persons associated with the filing of preliminary proxy material. The proposed amendments also are intended to reduce administrative costs incurred by the Commission in processing this material.

A proposed amendment to Rule 14a–7 would require registrants to provide securityholders, upon written request and the satisfaction of certain conditions, copies of its list of securityholder names, addresses and position listings, as well as any list of non-objecting or consenting beneficial owners where reasonably obtainable. At the option of the requesting securityholder, rather than of the registrant as under the current rule, the requestor could direct the registrant to mail its materials to securityholders at the requestor's expense. The purpose of this amendment is to facilitate dissemination of material information to securityholders by reducing the expense and delay requestors typically encounter in obtaining a securityholder list.

B. Legal Basis

The proposed amendments would be promulgated pursuant to Sections 14[81] and 23(a)[82] of the Exchange Act.

C. Small Entities Subject to the Rules

The proposed amendments would affect proxy filing and other requirements for registrants, including investment companies, and soliciting securityholders. Rule 0–10[83] under the Exchange Act provides that a "small business," for purposes of the Regulatory Flexibility Act, includes a registrant other than an investment company that had total assets of $5 million or less as of the end of its most recent fiscal year. For purposes of the Regulatory Flexibility Act, an investment company is a "small business" if it has net assets of $50 million or less as of the end of its most recent fiscal year.[84]

The proposed amendments to the proxy rules would apply to proxy solicitations or information statements of issuers with securities either registered pursuant to section 12(g) of the Exchange Act[85] or listed on a national securities exchange pursuant to section 12(b) of that Act,[86] the Commission is aware that some of these exempt small entities that are publicly traded register their securities and are subject to the proxy rules. In addition, fewer than 50 small entities have securities listed on a national securities exchange. The Commission estimates that, in all, between 1,400 and 1,800 of the approximately 10,500 issuers that are registered under section 12 and are subject to the proxy rules have total assets not exceeding $5 million.

The Commission further estimates that the proposed amendments would apply to 3,200 registrants that are management investment companies, of which approximately half have net assets of $50 million or less.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Rules 14a–2(b), 14a–6, 14a–7, 14a–11 and 14a–12 would not result in any significant increase in reporting, recordkeeping or compliance requirements. The proposed amendments to reduce or eliminate the preliminary filing requirements, and to eliminate non-public filing of all proxy soliciting materials, would result in a net diminution of reporting and other compliance requirements for all entities that qualify for the exclusion.

E. Overlapping or Conflicting Federal Rules

The proposed rules would not duplicate or conflict with any existing rule provisions.

F. Significant Alternatives

The proposed amendments to Rules 14a–6, 14a–7, 14a–11 and 14a–12 are expected to benefit all registrants or other persons subject to the proxy rules, regardless of size, by diminishing filing burdens under certain circumstances. One significant alternative to the proposed amendments could be different or simplified requirements for small entities. Such requirements for small entities could include the elimination of the filing requirements for small entities with respect to additional categories of preliminary proxy material. Alternatively, small entities or other persons could be exempted altogether from all requirements to file preliminary proxy materials. However, such elimination of filing requirements for small entities or exemption of small entities would not be consistent with the Commission's statutory mandate to require adequate disclosure to voting

[75] 17 CFR 240.14a–2(b).
[76] 17 CFR 240.14a–6.
[77] 17 CFR 240.14a–7.
[78] 17 CFR 240.14a–11.
[79] 17 CFR 240.14a–12.
[80] 5 U.S.C. 601 *et seq.*
[81] 15 U.S.C. 78n.
[82] 15 U.S.C. 78w(a).
[83] 17 CFR 240.0–10.
[84] Rule 0–10 under the Investment Company Act of 1940, 17 CFR 270.0–10.
[85] 15 U.S.C. 78*l*(g).
[86] 15 U.S.C. 78*l*(b).

securityholders. Another alternative could be the adoption of performance rather than design standards with respect to the preparation and filing of proxy materials by small entities. The adoption of such performance standards would not be consistent with the Commission's statutory mandate to require adequate disclosure to voting securityholders. With respect to an alternative revision of Rule 14a–7 to those proposed, the Commission has requested and will consider comment on that alternative, which would afford registrants the continued option to mail or provide the list to a requesting securityholder, but would require any registrant that elected to mail the requestor's proxy soliciting materials to bear the costs of mailing.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rule is adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–2291. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Basis

The amendments to the proxy rules are being proposed by the Commission pursuant to sections 14 and 23(a) of the Securities Exchange Act of 1934.

Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. By amending § 240.14a–2 to redesignate paragraphs (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively, and by adding a new paragraph (b)(1) to read as follows:

§ 240.14a–2 Solicitations to which §§ 240.14a–3 to 240.14a–14 apply.

* * * * *

(b) * * *

(1) Any solicitation by or on behalf of a person who:

(i) Does not have, and is not acting on behalf of a person who has, a material economic interest in the matters to be acted upon, other than as a securityholder of the registrant;

(ii) Does not seek, and is not acting on behalf of a person who seeks, either directly or indirectly through representatives, the power to act as a proxy for a security holder; and

(iii) Does not furnish or otherwise request, and is not acting on behalf of a person who furnishes or requests, a consent or authorization of a security holder for delivery to the registrant.

Note: The following are some examples of persons who will be deemed to have a material economic interest in the matters to be acted upon other than as a security holder of the registrant within the meaning of paragraph (b)(1) of this section, or to be acting on behalf of such a person within the meaning of this paragraph:

(a) The registrant, an affiliate of the registrant, and any officer or director of the registrant or of an affiliate of the registrant, or any persons serving in a similar capacity;

(b) An affiliate of a person who does not qualify for an exemption under this paragraph, any officer or director of such person, or any person serving in a similar capacity;

(c) An "interested person" of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), as that term is defined in section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)); or

(d) Any person who receives compensation from, directly or indirectly, any of the foregoing.

* * * * *

3. By amending § 240.14a–6 to remove paragraphs (b) and (f) and to redesignate paragraphs (c) through (e) and paragraphs (g) through (*l*) as paragraphs (b) through (d) and paragraphs (e) through (j); revise the caption to newly redesignated paragraph (b); revise newly redesignated paragraphs (c), (d), and (f); and in newly redesignated paragraph (i) remove the reference to "paragraph (j)" and replace it with "paragraph (h)" to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(b) *Definitive proxy statement and other soliciting materials* * * *

(c) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof have been released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

* * * * *

(f) *Speeches, press releases and scripts.* Notwithstanding the provisions of paragraph (a) of this section, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commission prior to use or publication. Definitive copies, however, shall be filed with, or mailed for filing to, the Commission as required by paragraph (b) of this section not later than the date such material is used or published. The provisions of paragraph (a) of this section shall apply, however, to any reprints or reproductions of all or any part of such material.

* * * * *

4. By amending § 240.14a–7 to revise paragraph (c) and to add new paragraph (d) to read as follows:

§ 240.14a–7 Mailing communications for security holders.

* * * * *

(c) In lieu of performing the acts specified in paragraphs (a) and (b) of this section, the registrant shall, at the security holder's option, furnish to such security holder in such form requested

by the security holder as is available to the registrant without undue burden or expense, a reasonably current list of the names, addresses and security positions of such of the holders of record specified in paragraph (a)(1) of this section as the security holder shall designate, and a list of the names and addresses of such of the bankers, brokers or other persons specified in paragraph (a)(2) of this section as the security holder shall designate, together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker or other person and a schedule of the handling and mailing costs of each such banker, broker or other person if such schedule has been supplied to the registrant, as well as any other information relating to the names, addresses and security positions of beneficial owners, including a list specified in § 240.14a-13(b) as requested by the security holder, and is in the possession of or reasonably available to the registrant; *provided, however,* that if the registrant had not already compiled such a list of beneficial owners, the security holder shall reimburse the registrant for one-half or other proportionate amount, depending on the number of requests for such information received by the registrant from security holders, of the costs incurred by the registrant pursuant to § 240.14a-13(b)(5). The foregoing information shall be furnished within five business days of receipt of the request of the security holder or at daily or other reasonable intervals as it becomes reasonably available to the registrant.

(d)(1) The security holder shall not use the information furnished by the registrant pursuant to paragraph (c) of this section for any purpose, other than:

(i) To solicit other security holders with respect to the same subject matter or meeting for which the registrant is soliciting or intends to solicit; or

(ii) To communicate with other security holders with respect to a solicitation commenced by the registrant.

(2) The security holder shall not disclose such information to any person other than an employee or agent to the extent necessary to effectuate the communication or solicitation.

(3) The request referred to in paragraph (c) of this section shall contain a representation that the foregoing information will be used solely for the purposes specified in paragraph (d)(1) of this section and will remain confidential.

5. By amending § 240.14a-11 to remove paragraph (c)(2) and redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5); revise paragraphs (c)(1), (e) and (g); in newly redesignated paragraph (c)(3) remove the reference to "paragraph (c)(3)"; and remove the last sentence in paragraph (f) to read as follows:

§ 240.14a-11 Special provisions applicable to election contests.

* * * * *

(c) *Filing of information required by Schedule 14B.* (1) No later than five business days following the commencement of a solicitation subject to this section or upon the filing of a preliminary proxy statement pursuant to § 240.14a-6(a) relating to such a solicitation, whichever is earlier, a statement in triplicate containing the information specified by Schedule 14B shall be filed with the Commission and with each national securities exchange upon which any security of the registrant is listed and registered, by and on behalf of each participant in such solicitation, other than the registrant.

* * * * *

(e) *Solicitations prior to furnishing required written proxy statement; filing requirements.* Eight copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by § 240.14a-3(a) shall be filed with, or mailed for filing to, the Commission no later than the date such material is sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

* * * * *

(g) *Application of § 240.14a-6.* The provisions of paragraphs (b), (c), (d), and (e) of § 240.14a-6 shall apply to the extent pertinent, to soliciting material subject to paragraphs (e) and (f) of this section.

6. By amending § 240.14a-12 to revise paragraph (b) to read as follows:

§ 240.14a-12 Solicitation Prior to Furnishing Required Proxy Statement.

* * * * *

(b) Eight copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of a written proxy statement required by Rule 14a-3(a) (§ 240.14a-3(a)) shall be filed with, or mailed for filing to, the Commission no later than the date such material is sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

Dated: June 17, 1991

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14771 Filed 6-24-91; 8:45 am]

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Tuesday
June 25, 1991

Part III

Department of State

Office of Protocol

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1990; Notice

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1416]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1990

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1990 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515 (a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: June 12, 1991.

Ivan Selin,

Under Secretary for Management.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: Album. A leather photograph album, gold-stamped "presented to the President and Mrs. George H. W. Bush by the Diplomatic Corps of Washington, DC Christmas 1990". Archives, Foreign. Recd: Dec 21, 1990. Est. value: $205.	His Excellency Jose Lois Fernandes Lopes, Ambassador of the Republic of Cape Verde, Cape Verde.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Multiple items. A wood panel, depicting a circular design of vari-colored woods, 46" Sq. A wooden candy dish with lid, 6" diam. and a wooden beaded necklace. Archives, Foreign Recd: Oct. 25, 1990. Est. value: $1550.	His Excellency General Andre-Dieudonne Kolingba, President of the Central African Republic, Central African Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: crystal. 14 crystal wine goblets, each engraved "GBB," by Mosor. Archives, Foreign. recd: Nov. 17, 1990. Est. value: $300.	His Excellency and Mrs. Vaclav Havel, President, Czech and Slovak Federal, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Book: "Codex Vysehradensis," an illustrated volume on the Coronation of the First King of Czechoslovakia and the Codex Key; both are reproductions. Archives, Foreign. Recd: Nov. 17, 1990. Est. value: $550.	His Excellency Vaclav Havel, President Czech and Slovak Federal, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. 1) Sculpture. Three crystal birds suspended over black base, entitled "Atlantique," edition 950, by Daum France; Approx. 36" high, 16" diam. 2) Porcelainware. A set of 12 Demitasse cups and saucers, a black and gold tree design on blue background with silver trim, by Limoges 1990, in a fitted vinyl case. Archives, Foreign. Recd: July 9, 1990. Est. Value: $7200..	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Consumables: 12 bottles of German Wine, 1977 through 1988 vintage. Accepted by other agency for official use. Recd: Jan. 4, 1990. Est. value: $260.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of German.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment: 1) A reproduction of a letter by President Jefferson addressed to Greek Academic Adamantios Korais, dated Oct. 31, 1823, in a leather folio stamped with Greek Cross. 2) Book, "The Greek Museums," by Ekdotike Athenon, 1975, Athens; inscribed 3) a sterling silver handhammered reproduction of a vessel, 16th Cent. B.C., designed as a duck. Archives, Foreign. Recd: June 6, 1990. Est Value: $450.	His Excellency Constantine Mitsotakis, Prime Minister of Greece and Mrs. Mitsotakis, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: 1) Painting of two brightly colored birds, oil on masonite, by Gesner Armand, 1989; Displayed in bright goldleaf frame; Image: 8" x 10"; overall: 14½" x 16½"; 2) a Domed wooden box with turtleshell veneer; 7½" x 4½" x 3". 3) a Large painting of a Haitian house with French-costumed soldiers outside; oil on canvas, by Ely Jacques; image: 24" x 30"; in gold-distressed wood frame; 29" x 35". Archives, Foreign. Rec'd: May 29, 1990. Est. value: $210.	Her Excellency Ertha Pascal Trouillot, President of the Republic of Haiti, Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Porcelain tea service for twelve, made by Herend, bouquet green pattern, Government transfer. Rec'd: Oct. 18, 1990. Est. value: $973.	His Excellency Jozeph Antall, Prime Minister Republic of Hungary, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: A multicolored striped and diamond patterned wall hanging, red-fringed on one end only. Wool blend. 43" x 75". Archives, Foreign. Rec'd: Dec. 21, 1990. Est. value: $400.	His Excellency and Mrs. Mohamed Belkhayat, Ambassador of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Flowers: Large arrangement of lilies, tulips, quince, etc., in reproduction Chinese urn style container; accepted by other agency for official use. Consumables: "Cheese spread and beef stick"; perishable. Household: A leaded crystal footed bowl by Rogaska of Yugoslavia, limited edition titled "Georgian Centrpiece. 11½" H., 12" diam; Achives, Foreign. Household: Two silk-covered circular boxes (20½" diam.). Archives, Foreign. Rec'd: Jan. 03, 1990. Est. value: $3575.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government
President and First Lady	Assortment: 1) Painting. Portrait of President Bush in Togolaise attire, oil on canvas, by M. Yenu. Elaborate goldleaf frame; 33" x 41"; 2) statuette. Sterling Silver Dove of Peace figure, engraved in French around circular base; 13" H. 9½" diam; housed in snakeskin covered case; 3) stamp album. black leather album of souvenir Togolaise stamps; gold stamped cover & spine, matching slipcase; 4) gold mask bracelet in snakeskin box. Archives, Foreign. Rec'd. July 31, 1990. Est. value: $6686.	His Excellence; General Gnassingbe Eyadema, President of the Republic of Togo, Togo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Medallions. Two bronze medallions lettered in Russian and depicting two birds on reverse; 2¾" diam.; and two related certificates. Archives, foreign. Rec'd: May 14, 1990. Est. value; $40.	His Excellency Yurity V. Dubinin, Ambassador of the Union of Soviet Socialist Republics (Outgoing), Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Samovar Set, a colorfully decorated electric Samovar with matching tray, teapot, bowl, and two glasses; and, a painting of a wooded scene, oil on masonite, 1988, displayed in a gold-painted wood frame; image: 13 1/2" x 16"; overall: 20" x 23". Archives, Foreign. Recd: May 31, 1990. Est. value: $230.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: A color photograph of President Bush and President Perez, standing on south lawn of the White house; matted under glass in gold-speckled wood frame; 16" x 19"; 26" x 29½" overall; and 17 color matted photographs of Mrs. Bush during visit to Costa Rica; each is 8" x 10"; contained in a black crocodile stamped folio depicting Costa Rican seal. Archives, Foreign, Recd: June 19, 1990. Est. Value: $350..	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	2 wool rugs (runners), black W/gray and beige, fringed two ends; 2 cotton tablecovers; a shawl or serape; a brown and beige vest; two straw hats; two vinyl valeeses, by Delsey. Archives, Foreign. Recd: Jan. 23, 1990. Est. value: $1405.	His Excellency Ali Abdallah Salih, President of the Yemen Arab, Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Black leather album of 120 color photographs of President and Mrs. Bush, President Valdez, et al., taken on occasion of President Valdez's visit to the White House on April 26, 1990; inscribed; contained in matching black and leather slipcase. Archives, Foreign. Recd: Dec. 20, 1990. Est. value: $2700.	His Excellency Carlos Andres Valdez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Multiple items, wooden vase with oriental motif, 17" high, base is 7" diam. in a red velvet box with white satin lining, mirrored wooden plaque, lettered "Republic of Maldives 25th Anniversary of Independence 1965–1990" with engraved inscription, in a red velvet box. book, "Maldives 25 years of Independence", inscribed. Small sold gold coin with similar lettering; Archives, Foreign. Consumables: Tuna, Forty-eight 7 oz. cans of "Dolphin Friendly" Maldives tuna, packed in oil. Charity. Recd: Oct. 23, 1990. Est. value: $696.	His Excellency Maumoon Abdul Gayoom, President, Republic of Maldives.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: A vinyl cover containing a "Cook Islands Proof Coin Set 1987"; (Consists of 7 coins ranging in value from 5 cents to 5 dollars); and, a vinyl cover containing 3 paper bills of 20 dollars, 10 dollars, and three dollars in value, titled "The currency of the Cook Islands"; Archives, Foreign. Stamps: A leather book containing a collection of various Cook Islands postage stamps and first day covers of varying denominations; Archives, Foreign. Book: "Images of Polynesia", published by Cook Islands Topographical Services LTD., Rarotonga, Cook Islands. Archives, Foreign. Recd: Apr. 20, 1990. Est. value: $335.	The Honorable Geoffrey Arama Henry, Prime Minister, Cook Islands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A sterling silver cigarette box with ridged lid. Engraved "Dr. Eduardo A. Duhalde" on inside lid and "Vice President of the Argentine Nation" on outside. 5½" x 4½" x 1½". Displayed in a blue vinyl case; Archives, Foreign. Book: A copy of "Politicians and Drugs" (toward a National Program), by Dr. Eduardo A. Duhalde, inscribed. Leather-bound and gold-stamped, Moire endpapers. Archives, Foreign. Recd: Dec. 05, 1990. Est. value: $450.	Dr. Eduardo Duhalde, President of the Senate, Congress of the Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Historic artifacts: Bolas. Three silver and enamelled balls attached to a handwoven leather lariat, enclosed in a blue fitted vinyl case. Archives, Foreign. Recd: Dec. 04, 1990. Est. value: $450.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Horses. Two pure-bred Argentine stallions. Government Transfer. Recd: Dec. 05, 1990. Est. value: Indeterminable.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: A sterling silver daggar in a sterling silver sheath. The sheath bears emblems of Argentina and the United States. Contained in a wooden presentation case. Archives, Foreign. Recd: Dec. 05, 1990. Est. value: $425.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: A facon or gaucho knife, sterling silver and gold handle and scabbard. 19" long overall. Archives, Foreign. Recd: Dec. 05, 1990. Est. value: $950.	His Excellency Alberto Pierri, President of the Chamber of Deputies, Congress of the nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting of a boat scene, oil on canvas, by Shannsuddehn, 1989; in gold-painted and fabric-covered wood frame; overall 47" H., 65" L; Archives, Foreign. Household: two Silver filigree pitchers, 11" H. Archives, Foreign. Recd: Feb. 13, 1990. Est. value: $1800.	His Excellency Hussain Muhammad Ershad, President of the People's Republic of Bangladesh, Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: A matching set of 18 kt. gold barley solitaire fountain pen and a ball pen, by Mont Blanc; made in Germany; certificate No. 06970. Archives, Foreign. Recd: Apr. 14, 1990. Est. value: $920.	His Excellency John W.D. Swan, Premier of Bermuda, Bermuda.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting. An acrylic and gouche modernistic color rendering of two tankards, by Bracher, signed. Matted under glass in brown wood frame. 21½" x 28¾". Overall 36" x 42½". Archives, Foreign. Recd: Dec. 04, 1990. Est. value: $3000.	His Excellency Fernando Collor, President of the Federative Republic of Brazil, Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A bronze sculpture, "Dancing Bear," by Pauta Saila, 11" × 9½" × 4"; signed limited-edition, 9½" × 15" × 2½". Archives, Foreign. Recd: July, 09, 1990. Est. value: $672.	The Right Honorable and Mrs. Brian Mulroney, Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A lapis all-purpose box with engraved silver plaque attached to hinged lid; 5" × 7¼" × 2". Archives, Foreign. Recd: Oct. 02, 1990. Est. value: $350.	His Excellency Patricio Aylwin Azocar, President of the Republic of Chile, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A sterling silver colonial style two-handled bowl, a cantaro, originally used for carrying water; inscribed. Displayed in a black fitted case. Archives, Foreign. Recd: Dec. 06, 1990. Est. value: $650.	His Excellency Patricio Aylwin Azocar, President of the Republic of Chile, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: 1) A brass key to the city of Santiago, bearing shield of Santiago, displayed in a blue velvet case with engraved presentation plaque, 2) a framed parchment diploma, 15" × 19", displayed in a velvet-covered case. Archives, Foreign. Recd: Dec. 06, 1990. Est. value: $350.	The Honorable Jaime Ravinet, Mayor of Santiago, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: A reproduction of a pre-Colombian figure entitled "Balsa", copied from the original made in 400–1600 AD; 24 kt. gold plate; displayed on a wood base; figure is 7" × 4" × 3½"; overall is 10" × 8" × 6"; included is a booklet entitled "Gold . . ."; Archives, Foreign. Stamps: A sheet of commemorative stamps, No. 000047, 130 air mail; and, a "Cumbre Presidential" Cartegena first day cover; President to keep personally. Book: "El Cafe De (The Coffee) from Colombia"; "Bambusa Guadua"; "Rural Colombia"; "Manglares"; and, "A Guide to the National Natural Parks System of Colombia". Archives, Foreign. Recd: Feb. 15, 1990. Est. value: $436.	His Excellency Virgilio Barco Vargas, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A sterling silver box for cigars and cigarettes engraved on hinged lid "To His Excellency Mr. George Bush, President of the United States of America" and "Washington, June 5, 1990"; bears facsimile signature of President Barco; 9¾" × 7¾"; enclosed in a blue fabric-covered box; and a copy of book, "Tipos y Costumbres De La Nueva Granada" (types and customs of New Granada), By M. Deas; Pub. 1989 by Fnodo Cultural, Cafetero. Archives, Foreign. Recd: June 05, 1990. Est. value: $490.	His Excellency Virgilio Barco Vargas, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A 3-legged wood table, 42" x 28½" diam; four wood chairs; a wood bowl w/wooden fruit; and, a solid brass statuette of a woman holding a platter on her head; 25" H.; all wood pieces carved with designs. Archives, foreign. Recd: Feb. 12, 1990. Est. value: $775.	His Excellency; Colonel Denis Sassou-Nguesso, President of the People's Republic of the Congo, Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: 15½" diameter shallow cut-crystal bowl, by Bohemia. Archives, Foreign. Recd: Nov. 17, 1990. Est. value: $600.	Czech and Slovak Federal Republic, Government of Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A set of crystal glasses; 12 water; 12 red wine; 12 white wine; 12 liqueur; and, 24 aperatif; by Moser of Czechoslovakia; enclosed in a red chest; residence; for official use/display. Book: "Letters to Olga" (June 1979–September 1982), by Vaclav Havel; inscribed; translated from the Czech by Paul Wilson; published by Henry Holt and Company, New York, 1989; leather-bound and slipcased. Archives, Foreign. Recd: Feb. 20, 1990. Est. value: $14600.	His Excellency Vaclav Havel President of the Czechoslovak Socialist Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Presioent	Assortment: 1) A Wooden carved cabinet or "Barqueno", 11 drawers, veneered w/geometrical drawings, frets of walnut & platuquero & cedar blocks; silver handles represent ears of corn; the two top drawers removed reveal a secret compartment at rear; displayed on a carved wood table stand; 44" H. overall, 20¾" W., 12¾" D.; 2) a woolen cape, beige w/ black piping & a flamestitched design; unlabeled. Archives, Foreign. Recd: July 23, 1990. Est. value: $2050.	His Excellency Rodrigo Borja, President of the Republic of Ecuador, Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Modernistic painting entitled "Gridlas De La Tierra," by Roberto Galicia, signed, 1989; oil on canvas, 33" x 51"; in a black wood frame w/ silvered liner; overall: 38" x 55". Archives, Foreign. Recd: Feb. 07, 1990. Est. value: $3500..	His Excellency Alfredo Cristiani, President of the Republic of El Salvador, El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: "Down to Earth," (Speeches and writings of His Royal Highness Prince Philip Duke of Edinburgh on the relationship of man with his environment); Published by Collins, London, 1988; inscribed; spine only is leatherbound. Archives, Foreign. Recd: May 18, 1990. Est. value: $350.	His Royal Highness Philip Prince; the Duke of Edinburgh, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Kaya bowl. Mahogony Bowl 20" in diameter and 8 inches in dept; Juti braided rope attached with three cowrie shells plaque on bowl lettered: "From the Government & People of the Republic of Fiji." Fijian tapa cloth. 25" × 25". pewter cup. lettered "Fiji Islands" with scenes of the islands. Archives, Foreign. Recd: Nov. 05, 1990. Est. value: $375.	The Right Honorable RATU SIR KAMISESE MARA K.B.E., G.C.M.G., Prime Minister of the Republic of Fiji, Fiji.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessory: A Mont Blanc Meisterstuck fountain pen with 18 kt. gold NIB, enclosed in a box labeled 'this pen used to sign "Charter of Paris for a New Europe", November 21, 1990'. Camp David; official use/display. Recd: Nov. 21, 1990. Est. value: $345.	His Excellency Pierre-Henri Dessaux, CSCE Secretariat, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Fishing rod and reel. A deep sea "President" no. 12/0 rod and reel by Mitchell, made in France; rod is marked "big game 80/100 lb. 37 kg. overseas"; and, an historic book, "treaty for the construction of vessels," by Frederick de Chapman, Chevalier of the order of the King of Sweden; translated from Swedish; this edition printed in 1779. Achives, Foreign. Recd: Apr. 19, 1990. Est. value: $2200.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A footed urn style vase, handpainted in a deep blue marbelized design with goldleafed rims, by Chantal Mirabaud, signed. by Limoges, France. 8¼" high, 7½" diam. Across mouth. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $1500.	His Excellency Francios Matterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: A gold (999) coin commemorating German unification on October 3, 1990. Displayed in a block of lucite and housed inside a red paper-covered case. Archives, Foreign. Recd: Sep. 25, 1990. Est. value: $500.	Dr. Sabine Bergmann-Pohl, Member, People's Chamber of the German Democratic Republic, German Democratic Republic,.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Four cans of blutwurst; two cans of bratwurst; and, two cans of leberwurst. Accepted by other agency for official use Recd: Jan. 04, 1990. Est. value: $11.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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President	Book: A two-volume set of books, "The Complete Angler," (or the contemplative Man's Recreation Being a Discourse of Rivers Fish-Ponds Fish and Fishing), by Izaak Walton & Instructions on how the angle for a trout grayling in a clear stream by Charles Cotton. Published in London by William Pickering, 1836. original leatherbound volumes with goldleafed pages and tooling. Residence; for official use/display. Recd: Nov. 18, 1990. Est. value: $300.	His Excellency Helmut Kohl, Chancellor of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Figure of a swan. A solid blond-colored wooden swan with gold-painted beak; stamped "Artecasa" on underside; 25" L., 14" H., 11" W; Archives, Foreign. Consumables: Cigars. A box of 20 "Excalibur" cigars handmade in Honduras; No. II English Claro; each cellophane wrapper lettered "Mr. George Bush". Archives, Foreign. Recd: Apr. 17, 1990. Est. value: $221.	His Excellency Rafael Callejas, President of the Repubic of Honduras, Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Multiple items. Book, "Bibliotheca Corviniana: The Library of King Matthias Corvinus of Hungary", by Covina Kiado. Two silver coins, appx. 1 oz. each, both have lettering in Hungarian text. One small gold coin depicting lettering in Hungarian. Archives, Foreign. Recd: Oct. 18, 1990. Est. value: $220.	His Excellency Jozsef M. Antall, Prime Minister, Republic of Hungary, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A wood-framed waterford crystal presidential seal, crafted by R. Cunningham, 1990; 27½" diameter. One of a kind; Camp David; official use/display. Artwork: A crystal world globe with engraved inscription, by Cavan crystal; 17" high, 13" diam. Archives, Foreign. Recd: Feb. 27, 1990. Est. value: indeterminable..	His Excellency Charles J. Haughey, Prime Minister of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A leaded crystal footed bowl with scalloped edge and traditional Irish harp design, engraved "Happy St. Patrick's Day", by Tipperary; 10½" high, 10½" diam; wood base included. Archives, Foreign. Recd: Mar. 16, 1990. Est. value: $2000.	His Excellency Brian Lenihan, Minister for Foreign Affairs of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessory: A sterling silver letter-opener embedded with a 22 kt. gold coin in handle. 9" long. Archives, Foreign. Recd: Mar. 12, 1990. Est. value: $750.	His Excellency Giulio Andreotti, President of the Council of Ministers of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Table runner. Silk brocade, fringed on two ends, orange with gold, green, and blue floral design overall; 40" long, 23" wide. Archives, Foreign. Recd: July 18, 1990. Est. value: $225.	His Excellency Toshiki Kaifu, Prime Minister of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Ship model. An aluminum model of the turtleship built by Admiral Sun-Shin Yi of Korea, known as the first iron-clad warship in the world, and used by Admiral Yi to defeat the Japanese Armada during the Korean-Japanese War (1592–1598). Ship displayed in a glass case with presentation plaque attached. Ship is 7" × 5" × 5". Case is 11½" × 8½" × 9½". Ship and case housed in a velvet-covered case. Archives, Foreign. Recd: Nov. 15, 1990. Est. value: $250.	His Excellency Jong Koo Lee, Minister of National Defense of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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President	Assortment: 1) A white wool sombrero with silver threaded designs. 2) A pair of short-top black leather boots. 3) An outfit of a white scarf and bow tie, a white dress shirt by "Hugo Boss", a black wool rodeo jacket, trousers, and vest with silver-plated horseshoe design ornamentation. 4) A leather decorated gun holster. 5) A gold and silver medallion commemorating the reunion of Presidents Bush and Salinas; Archives, Foreign. Assortment. 1) A leather saddle embellished with silverwork (800) including spurs and a lasso. 2) A sword with silver horsehead handle and steel blade. Engraved in Spanish. 30" long. Archives, Foreign. Recd: Nov. 26, 1990. Est. value: $6,435.	His Excellency Carlos Salinas De Gortari, President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. government.
President	Consumables: Approx. 30 lbs. of candied chestnuts; accepted by other agency for official use. Consumables: Approx. six lbs. of chocolates by Duhau of Paris. Accepted by other agency for official use. Recd: Jan. 03, 1990. Est. value: $888.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. government.
President	Consumables: A wicker basket containing a large assortment of gourmet items, including a tin of glaced apricots; Belgian chocolates; caviar; bottles of hot sauce; Texas style peanuts; etc., and a large arrangement mixed flowers; accepted by other agency for official use. Household: A sterling silver bowl, lined with gold, titled "The Franklin Mint Bicentennial Bowl", produced in 1976, Archives, Foreign. Recd: June 12, 1990. Est. value: $6350.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. government.
President	Artwork: A wooden carved male figure, approx. 3 feet high; Archives, Foreign. A wooden xylophone with mallets, partially covered with animal hair; 21" x 58"; mallets included. Archives, Foreign. Recd: Mar. 13, 1990. Est. value: $575.	His Excellency Joaquim Alberto Chissano, President of the People's Republic of Mozambique, Mozambique.	Non-acceptance would cause, embarrassment to donor and U.S. Government.
President	Rifle. An AK–47 rifle, captured from the Sandinistas and handed over by Ramon Torres Garcia, a member of the Nicaraguan Resistance on August 5, 1990 at Almendro. Mounted in broken condition in a wooden shadowbox frame attached with two engraved brass presentation plaques. Rifle is 35⅛" Long. Overall: 41¼" × 12¼". Archives, Foreign. Recd: Oct. 01, 1990. Est. value: $400.	Her Excellency Violeta Barrios De Chamorro, President of the Republic of Nicaragua, Nicaragua.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Framed artwork. A Mola or handstitched framed cloth, depicting in multicolored design the American and Panamanian flags and lettered "Causa, Justa, 20 De Diciembre 1989 Liberacion De Panama"; 12½" × 16½"; overall 18" × 21½". Archives, Foreign. Recd: July 23, 1990. Est. value: $300.	The Honorable Alcibiades Alvarado, Member, Christian Democratic Party, Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A framed Mola picture of jungle foliage, handstitched by Medina; 58" × 36". Archives, Foreign. Recd: Apr. 30, 1990. Est. value: $1200.	His Excellency Guillermo Endara, President of the Republic of Panama, Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Two framed woodcarved scenes of the fronts of houses, with the doorways predominating, by P. Ayala, 1989; 21¾" × 27½" and 32½" × 35½". Archives, Foreign. Recd: June 12, 1990. Est. value: $500.	His Excellency Andres Rodriguez, President of the Republic of Paraguay, Paraguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A slucki belt, 16th to 18th century, multicolored silk stripings, 14" wide, 13 feet long; fringed on two ends. Archives, Foreign. Recd: Mar 21, 1990. Est. value: $6000.	His Excellency Tadeusz Mazowiecki, Prime Minister of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A set of sterling silver nautical astrolabes; reproductions of ones used in 1540, 1555, and 1624 respectively; displayed in a fitted blue case. Archives, Foreign. Recd: Jan. 11, 1990. Est. value: $350.	His Excellency Anibal Cavaco Silva, Prime Minister of Portugal, Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment. 1) A figure of two carved dark green jade camels with U.S. and Saudi flags embellished with 18 kt. gold and a gold palm tree, displayed on base with engraved presentation plaque and housed in a hinged chest. Figure is 14" × 10" × 5".2) A pair of 18 kt. gold circular cuff links bearing Saudi script; Archives, Foreign. Weapons: A semi-automatic assault rifle, German design G3A3, brown wood stock, black metal and brass hardware, ammunition clip and certificate in a brown vinyl case. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $9350.	Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom, of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Map. A sterling silver map of the state of Kuwait, washed in gold, displayed in gold-toned wood frame. Map is 6" × 6"; overall: 12¼" sq. Archives, Foreign. Recd: Sep. 28, 1990. Est. value: $230.	His Highness Sheikh Jabir Al-Ahmad Al-Sbah, Amir of the State of Kuwait, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: 1) A maroon leather briefcase with brass locks, by Bally. 2) four videos on Saudi Arabia and the Iraqi invasion of Kuwait. 3) four small publications on Saudi Arabia. 4) three coffee table books, "The Kingdom of Saudi Arabia," "The Art of Bedouin Jewellery," and "The Art of Arabia Culture". 5) A metal and glass model of the TV tower in Riyadh, on marble base, enclosed in vinyl case. 30" H. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $1070.	His Excellency Ali Hassan Alshaer, Minister of Information of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: An arrangement of talisman roses, yarrow, ivy, etc. in an ivy-covered basket. Accepted by other agency for official use. Recd: June 12, 1990. Est. value: $300.	His Royal Highness Bandar Bin Sultan Bin Abdulaziz, Prince/Ambassador of Saudi Arabia and Princess Haifa, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic equipment: A boron graphite gold-plated golf putter by anvil; engraved "President George Bush from State President F.W. De Klerk"; enclosed in a wood case with brass presentation plaque attached to hinged lid; putter is 36" long; case is 41" long. Archives, Foreign. Recd: Sep. 24, 1990. Est. value: $375.	His Excellency F.W. De Klerk, State President of the Republic of South Africa, South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: A wool wallhanging depicting President Bush with partial Presidential seal; handwoven in Tunisia; 40" × 52"; Archives, Foreign. Artwork: A sterling silver filigree dove of peace, mounted on gray marble base; dove is 11½" × 7" × 4"; housed in brown leather case 13½" × 9½" × 8"; Residence; for official use/display. Photograph: A color photograph of President Ben Ali, inscribed; displayed in a silver (800) frame with easel backing; 9½" × 12" overall. Resident; for official use/display. Recd: May 15, 1990. Est. value: $2650.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia, Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A new Turkish silk rug, overall multicolored floral design bordered in blue and fringed on two ends; signed Hereke; made in Istanbul area; 36" × 58". Archives, Foreign. Recd: Jan. 18, 1990. Est. value: $4000.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: 1. Plate. A glazed ceramic plate or platter with an overall floral design in blues and greens; handmade; signed on underside; hanger attached; 15¼" diam. 2. Photograph. A color photograph of President and Mrs. Ozal, inscribed; displayed in sterling silver frame with velvet easel backing; 9½" × 12" overall. Archives, Foreign. Recd: Sep. 25, 1990. Est. value: $395.	His Excellency and Mrs. Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment. A parker ball pen, used by Pres. Gorbachev to sign the historic treaties in the East Rm & then handed to Potus as a personal gift; and a wristwatch, depicting the American & Soviet flags on dial; Camp David; official use/display. Box. A navy blue paper-covered box gold-stamped "Washington, D.C., May 30-June 3, 1990" and depicting the presidential seal and seal of the Soviet Union; 9" × 5½" × 2"; contained the parker ball point pen which Soviet President Gorbachev used to sign the historic East Room Treaties and then handed to President Bush as a personal gift. Archives, Foreign. Recd: May 31, 1990. Est. value: $100.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republic, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Cartoon: A watercolor cartoon of Presidents Bush & Gorbachev as boxers. A figure of the world is holding up their arms in victory following their knockout of a monster labeled "Cold War." Titled "Knockout" (in Russian), 1990; brown frame, 15½" × 19" overall; Camp David; official use/display. Consumables: One 1.75 liter bottle of Stolichnaya Russian vodka. Accepted by other agency for official use. Recd: Sep. 07, 1990. Est. value: $2025.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A medium brown-colored yak hair buttonless coat with stitched design in gray and red around edges and a silk scarf in darker shade with same design on edges. Archives, Foreign. Recd: July 25, 1990. Est. value: $1750.	The Honorable Nursultan A. Nazarbaev, President, Supreme Soviet of Kazakhstan, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Consumables: 1) 3 bottles of vodka (Stolichnaya, Russkaya, and Cantpect); and 2) two 4-oz. jars of caviar; accepted by other agency for official use. Household: A large wooden pedestal style cup, carved in one piece; 18" H. Archives, Foreign. Recd: Apr. 16, 1990. Est. value: $270.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: A gold coin, depicting a woman with sword, and engraved "Asamblea General, Al Presidente de Los Estados Unidos De America Sr. George Bush 4-12-90". 18 kt. gold. 1¾" diam. enclosed in a blue box bearing assembly seal. Archives, Foreign. Recd: Dec. 07, 1990. Est. value: $450.	General Assembly, The Members of the Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: A silver-handled and steel-bladed knife monogrammed "G8" in gold, in a silver and leather sheath; 11½" long. Archives, Foreign. Recd: Feb. 05, 1990. Est. value: $300.	Mr. Luis Alberto Lacalle, President-elect of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A display of various nautical knots and other naval mementos. Displayed under glass in a lacquered brown wood frame with brass corners. Engraved presentation plaque attached. 21" × 28"; Kennebunkport; for official use/display. Historic artifacts: A pair of silver and gold antique spurs, probably late 16th or early 19th century, displayed in a blue case with a silver engraved presentation plaque. Archives, Foreign. Recd: Dec. 04, 1990. Est. value: $1150.	His Excellency Luis Alberto Lacalle, President of the Oriental Republic of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government
President	Artwork: Modernistic flat three-dimensional metal sculpture, by Cruz-Diez, August 1989; 65" × 33". Archives, Foreign. Recd: Apr. 26, 1990. Est. value: $25,000.	His Excellency and Mrs. Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A new Saber enclosed in an early 19th century scabard; hilt and sheath of silver, base metal, and wiello; housed in a wooden case inlaid with mother-of-pearl designs; Saber is 37½" long; case is 45½" long. Archives, Foreign. Recd: Jan. 23, 1990. Est. value: $1400.	His Excellency Ali Abdallah Salin, President of the Yemen Arab Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A white hand-knitted cotton long-sleeve pullover sweater with red, white, and blue trim at neck, cuffs, and bottom, by Linda Laing. Archives, Foreign. Recd: July 9, 1990. Est. Value: $168.	The Right Honorable and Mrs. Brian Mulroney, Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A garnet and gold necklace set in individual star designs; Archives, Foreign. Household: A Bohemian leaded crystal vase in a flower basket design; 9" high; Archives, Foreign. Household: A glass tea set with applied gold decoration and raised floral motifs; includes tea pot, creamer, sugar bowl, six cups and saucers. Archives, Foreign. Rec: Feb. 20, 1990. Est. value: $1500.	His Excellency Vaclav Havel, President of the Czechoslovak Socialist Republic, Czechoslovakia.	Non-acceptance would cause embarrasment to donor and U.S. Government.
First Lady	Artwork: A plaster replica "Unfinished Head of Queen Nefertiti," the original is in the Egyptian Museum, Cairo. Archives, Foreign. Recd: Nov. 30, 1990. Est. value: $250.	His Excellency Faraq Husni, Minister of Culture, Egypt Museum, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Artwork: A semiglazed prototype Terra Cotta vase by Nabil Darwish; measures approx. 17" tall, 15" wide, made October 1990. Archives, Foreign. Recd: Nov. 30, 1990. Est. value: $500.	Mrs. Suzanne Mubarak (Wife of President Mubarak), Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Silver box made by Gerald Benney. West Wing; for official use/display. Recd: Feb. 22, 1990. Est. value: $300.	His Royal Highness Charles (Windsor), The Prince of Wales, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A black leather envelope style shoulder bag, by Fendi; 12" long, 8" high, 2" thick at bottom. Archives, Foreign. Recd: Mar. 11, 1990. Est. Value: $350.	Mrs. Livia Andreotti (Wife of the Prime Minister of Italy), Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A shawl or travelling blanket, punched design fabric in a bottle green color, fur-trimmed; by Fendi. Archives, Foreign. Recd: July 10, 1990. Est. value: $3000.	Mrs. Livia Andreotti (Wife of the Prime Minister of Italy), Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Oval Intaglio (cameo) and gold-framed (750) brooch of a woman's head; 2" diameter. Archives, Foreign. Recd: Apr. 25, 1990. Est. value: $420.	His Excellency Bettino Craxi, Secretary of the Socialist Party of Italy, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A blue print comforter with white crocheted edge. Included are two matching pillow shams and a plain blue print dust ruffle. Archives, Foreign. Recd: Nov. 26, 1990. Est. value: $250.	Mrs. Rosa Jauregui De Canales (Wife of the Mayor of Aqualeguas, Mexico), Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A sterling silver bracelet with amethysts and turquoise stones and matching earrings. Handmade in Mexico. Archives, Foreign. Recd: Nov. 26, 1990. Est. value: $400.	Mrs. Alma Elisa Reyes De Rizzo (Wife of the Municipal President of Monterrey), Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: A gigantic arrangement of mixed flowers in plastic container; accepted by other agency for official use. Consumables: Nine bottles of French parfum by Annick Goutal (100 ml each bottle), Paris. Contained in a fabric-covered box; Archives, Foreign. Consumables: Assorted chocolates by Lenotre, Paris. Four tins of marrons glaces (cakes) by Hediard. Three lbs. of Melange Madeleine coffee by Hediard. Nine tins of dates by Fauchon of Paris. Tins of caviar and salmon; accepted by other agency for official use. Boxes. Two fabric-covered chests. Archives, Foreign. Recd: June 09, 1990. Est. value: $3065.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Carved bowl with alligator finial, 14"×8"×14"; and, a wooden carved box with lid; 8"×3"×3". Archives, Foreign. Recd: Mar. 13, 1990. Est. value: $300.	Mrs. Joaquim Alberto Chissano (Wife of the President of the People's Republic of Mozambique), Mozambique.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: 1) a short-sleeve cotton Mola dress, royal blue with colorful stitched designs to simulate ric-rac at top, middle, and bottom; handsewn; 2) a multicolored crocheted purse; Archives, Foreign. Jewelry: A gold stick pin or huaca, filigree design reproducing ancient pre-Colombian artifact unearthed in Panama; 2" long. Archives, Foreign. Recd: Apr. 30, 1990. Est. value: $570.	His Excellency Guillermo Endara, President of the Republic of Panama, Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A cut crystal bowl, 12" diam., 5" high; by Krasno Glassware. Archives, Foreign. Recd: Mar. 21, 1990. Est. value: $75.	His Excellency Tadeusz Mazowiecki, Prime Minister of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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First Lady	Artwork: A quartz clock set with diamond and ruby numerals and housed in a malachite and gold-plated silver case designed as a Saudi edifice. Bears the royal Saudi gold crest and attached with an engraved brass presentation plaque. 9" × 7½" × 5½" overall. Displayed in a hinged velvet-covered case bearing gold Saudi crest on lid; Archives, Foreign. Book: A copy of "Abha" (Bilad Asir, Southwestern Region of the Kingdom of Saudi Arabia), by Noura Bint Muhammad Al-Saud, Riyadh, 1989; Archives, Foreign. Jewelry: An 18 kt. gold breastplate style necklace with colored stones; Archives, Foreign. Clothing and accessories: A green silk sari-like wrap with gold and silver threaded designs embellished with colored glass stones. 13 feet 2 inches long. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $10045.	Her Royal Highness Jawhara Ibrahim Al-Ibrahim (wife of the custodian of the two holy mosques King Fahd), Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Flowers: A large arrangement of peonies, roses, snapdragons, bluebells, etc. in wicker basket. Accepted by other agency for official use. Recd: June 08, 1990. Est. value: $300.	His Royal Highness Bandar Bin Sultan Bin Abdulaziz, Prince/Ambassador of Saudi Arabia and Princess Haifa, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A black ostrich handbag with separate gold-plated chain handle included, by Cape Cobra, Cape Town. Archives, Foreign. Recd: Sep. 24, 1990. Est. value: $795.	His Excellency F. W. De Klerk, State President of the Republic of South Africa, South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A watercolor of Tunisian horsemen, by Victor Sarfati, signed; on paper with white linen matting under glass in gold-painted wood frame with presentation plaque, card, and artist's biographical sketch attached to reverse; image: 21" × 29"; over all: 29" × 37". Camp David; official use display. Recd: May 15, 1990. Est. value: $450.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia, Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A circular wall hung boudoir mirror in a sterling silver repousse frame; 12" diam. Archives, Foreign. Recd: Sep. 27, 1990. Est. value: $450.	Mrs. Semra Ozal (wife of the President of the Republic of Turkey), Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A black lacquered box depicting an overall fairyland type scene with human figures and a white horse in front of an open gate, made 1985; 6½" × 4" × 1½". Archives, Foreign. Recd: May 14, 1990. Est. value: $1200.	His Excellency Yuriy V. Dubinin, Ambassador of the Union of Soviet Socialist Republics (Outgoing), Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A square modern wooden sculpture, by Carlos Medina, signed; 9½" diam., 3" thick. Archives, Foreign. Recd: Apr. 26, 1990. Est. value: $1500.	His excellency and Mrs. Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A necklace, three bracelets, earrings, and a nosepiece, all silver. Archives, Foreign. Recd: Jan. 23, 1990. Est. value: $295.	His Excellency Ali Abdallah Salih, President of the Yemen Arab Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul W. Bateman, Deputy Assistant to the President for Management.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile." Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian news media: "The Europeans", "The Iraqi Invasion . . .", "The Departure of Yemenis . . . and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
D. Allan Bromley, Assistant to President for Science and Technology.	Wall hanging: Green, signed by the artist, appx. 4'×6'. Presidential staff; for official use/display. Recd: Dec. 07, 1990. Est. value: $1200.	His Excellency Carlos Perez, President, Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Bruce E. Caughman, the President's Aide.	Sterling silver cuff links depicting the symbol of Saudi Arabia. Books: "The Art of Bedouin Jewellery", and "The Art of Arabian Costume: A Saudi Arabian Profile", "Modernity and Tradition: The Saudi Equation" and "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian news media: "The Europeans," "The Iraqi Invasion . . .", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $690.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sandra L. Charles, Director of Near East, South Asia Affairs, NSC.	Jewelry: Cuff links depicting the symbol of Saudi Arabia, 18 Karat gold. GSA. Recd: Nov. 28, 1990. Est. value: $450.	The Honorable Abdullah Bin Abdulaziz Al Saud, Crown Prince, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James W. Cicconi, Assistant to the President and Deputy to the Chief of Staff.	Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian news media "The Europeans" "The Iraqi Invasion..." "The Departure of Yemenis..." and "The Kingdom in Brief". Sterling silver cuff links depicting the symbol of Saudi Arabia; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 15, 1990. est. value: $690.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David F. Demarest, Jr., Assistant to the President for Communications.	Sterling silver cuff links depicting the symbol of Saudi Arabia. Books: "The Art of Bedouin Jewellery" "The Art of Arabian Costume: A Saudi Arabian Profile", "Modernity and Tradition: The Saudi Equation" and "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian news media: "The Europeans", "The Iraqi Invasion . . .", "The Departure of Yemenis . . .", and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $690.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Max Marlin Fitzwater, Assistant to the President and Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation." Book "The Heritage of the Kingdom of Saudi Arabia". Four video cassettee tapes made from the Saudi Arabian news media "The Europeans", "The Iraqi Invason . . .", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	35 decorative medals enclosed in a red leather box decorated to resembie a book. Medals are steel with gold electroplate. GSA. Recd: Mar. 28, 1990. Est. value: $245.	Le General Mohamed Achahbar, Secretary General De L'Administration De La Defense Nationale.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	Desk set: Includes desk mat, leather picture frame, leather calendar holder, pen holder with two pens, leather portfolio. GSA. Recd: Dec. 26, 1990. Est. value: $385.	His Excellency Najmuddin A. Shaikh, Ambassador, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	Wall hanging: Yellow cloth, appx. 4'×6'. Presidential staff; for official use/display. Recd: Dec. 07, 1990. Est. value: $700.	His Excellency Carlos Perez, President, Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Senior Director, NESA, NSC.	Jewelry: man's sterling silver and 14K gold Rolex watch. Official certification number: 16223. GSA. Recd: May 13, 1990. Est. value: $3654.	Shaikh Isa Bin Sulman Al-Khalifa, Amir, State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Senior Director, NESA, NSC.	18 Karat white and yellow gold cuff links depicting the symbol of Saudi Arabia. Book "The Art of Bedowin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian News Media "The Europeans", "The Iraqi Invasion . . . ", "The Departure of Yemenis . . . " and "The Kingdom in Brief"; Presidential staff; for official use/display. Black leather briefcase, made by Samsonite. Presidential staff; for official use/display. Recd: Nov. 30, 1990. Est. value: $915.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ster en . .lart, Special Assistant to the President and Deputy Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile." Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian News Media "The Europeans", "The Iraqi Invasion . . . " "The Departure of Yemenis . . ." and "The Kingdom In Brief."; GSA. Black leather Samsonite briefcase. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause .ibarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John G. Keller, Jr., Deputy Assistant to the President.	18 Karat Gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabia News Media "The Europeans," "The Iraqi Invasion . . .", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather Samsonite breifcase. GSA. Recd: Nov. 15, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Herbert D. Kleber, Deputy Director for Demand Reduction, ONDCP.	Small sterling silver artwork depicting a floral arrangement, appx. 5" in length. GSA. Recd: Dec. 06, 1990. Est. value: $250.	Mr. Fiorenzo Angelini, President, Pontificum Consillium de Apostolatu, The Vatican, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Roman X. Popadiuk, Deputy Assistant to the President and Deputy Press Secretary.	18 Karat Gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian News Media "The Europeans," "The Iraqi Invasion . . .", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather Samsonite breifcase. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joseph Thomas Ratchford, Associate Director for Policy & Int'l Affairs.	Artwork: Sterling silver sculpture of a rickhaw bicycle encased in glass display box with wooden base, 7" in length, 6" high. GSA. Rec: Oct. 04, 1990. Est. value: $250.	B.J. Habib, Minister of State, Ministry for Research and Technology, Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government
Edward M. Rogers, Jr., Deputy Assistant to the President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia, Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile." Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian News Media "The Europeans", "The Iraqi Invasion..." "The Departure of Yemenis..." and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sigmund A. Rogich, Assistant to the President for Public Events and Initiatives.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian News Media: "The Europeans", "The Iraqi Invasion...", "The Departure of Yemenis...", and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His excellency, Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Sigmund A. Rogich, Assistant to the President for Public Events and Initiatives.	Crystal decanter, deeply etched, contains Russian liquor, appx. 6" in Height ad 4" in diameter. Six matching shot glasses, appx. 2¼" in height and 1¾" in diameter. Three jars of Russian caviar, 2 oz. each. Ten boxes of Russian cigars, each box contains five cigars. GSA. Recd: June 25, 1990. Est. value: $370.	President Mikhail Gorbachev, President, Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	1) Hand carved duck: Green wing teal (Hen) #203 by Don Honegger, Chelsea, Quebec. 2) Bronze telephone "Wood Calling Bronze, 1988" on wooden platform from the Canadian Contemporary Sculpture Collection by Art Bronzes Int'l Inc. Presidential staff; for official use/display. Recd: July 19, 1990. Est. value: $1126.	The Right Honorable and Mrs. Brian Mulroney, Prime Minister, Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Artwork: Mixed media picture featuring chalk and watercolor and acrylic paint, depicting a girl and an oriental scene, matted, in a brown wooden frame, appx. 28" x 25". Presidential staff; for official use/display. Recd: Aug. 23, 1990. Est. value: $350.	His Excellency Kabun Muto, Minister International Trade and Industry, Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government..
Brent Scowcroft, Assistant to the President for National Security Affairs.	Weapon: Semi-automatic rifle, black metal with brown wood stock and brass, and an ammunition clip and certificate of authenticity enclosed in a brown vinyl case. Presidential staff; for official use/display. Recd. Nov. 21, 1990. Est. value: $650.	His Excellency Fahd Bin Adb Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Artwork: Stone, reddish in color, with carving depicting a cross in the center. A Commissioned work of natural Armenian stone, referred to as a "Krach'Ker" (Cross of Stone). Presidential staff; for official use/display. Recd: Oct. 04, 1990. Est. value: $5000.	His Excellency Levon Ter-Petrosyan, President/Chairman, Armenian Supreme Soviet Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sichan A. Siv, Deputy Assistant to the President for Public Liaison.	Bhutanese Thanoka, wall hanging of the Tutelarydeity Vajrapan, native handicraft. GSA. Recd: Oct. 20, 1990. Est. value: $250.	His Majesty Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sichan A. Siv, Deputy Assistant to the President for Public Liaison.	Expended for food, lodging, and transportation. Recd: Nov. 14, 1990. Est. value: indeterminable.	His Excellency Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.
9050082A—John H. Sununu, Chief of Staff to the President.	Household: Rectangular crystal vase, 8½" high with square base 3⅛" X 3⅛" and square neck 3⅜" X 3⅜". Front of vase etched with a tree motif. Made by Cristal De Sevres of France. Presidential staff; for official use/display Recd: May 02, 1990. Est. value: $260.	President Francois Mitterrand, President, French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
9042154A—John H. Sununu, Chief of Staff to the President.	Weapon: A semi-automatic rifle, black metal with brown wood stock, and an ammunition clip and certificate of authenticity enclosed in a brown vinyl case. Presidential staff; for official use/display. Recd: Nov. 21, 1990. Est. value: $650.	His Excellency Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
9042167B—Charles G. Untermeyer, Assistant to the President and Director of Presidential Personnel.	Bhutanese Thanoka, wall hanging of the Tutelarydeity Vajrepan, native handicraft. GSA. Recd: Oct. 20, 1990. Est. value: $250.	His Magesty Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
9042263A—Charles G. Untermeyer, Assistant to the President and Director of Presidential Personnel.	Expended for food, lodging, and transportation. Recd: Oct. 14, 1990. Est. value: indeterminable.	His Excellency Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.
9042266A—Diana K. Untermeyer, Executive Assistant to the Counsel to the President.	Expended for food, lodging, and transportation. Recd: Oct. 14, 1990. Est. value: indeterminable.	His Excellency Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
9042142A—Chriss Winston, Deputy Assistant to the President for Communications.	Jewelry: watch, 18 karat white gold. Face depicts the symbol of Saudi Arabia with a black vinyl wristband, made by Baume and Mercier, Geneve. GSA. Recd: Nov. 30, 1990. Est. value: $2500.	His Excellency, Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE VICE-PRESIDENT

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
9063—Vice President and Mrs. Quayle	Household: Two lead cut crystal vases. Residence; For official use/display. Recd: Feb. 21, 1990. Est. value: $800.	His Excellency and Mrs. Vaclav Havel, President, Czech and Slovak Federal, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90378—Vice President and Mrs. Quayle.	Multiple items: Paperweight with miniature Mosaic scene and Fendi ladies handbag. Archives, Foreign. Recd: Feb. 6, 1990. Est. value: $570.	His Excellency Giulio Andreotti, President of the Council of Ministers of the Italian Republic of Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90575—Vice President and Mrs. Quayle.	Multiple items: Sterling silver serving plate in the shape of a leaf and a key chain. Residence; for official use/display. Recd: May 7, 1990. Est. value: $2,000.	Mrs. Livia Andreotti (wife of the Prime Minister of Italy) Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
901176—Vice President and Mrs. Quayle.	Multiple items: Inlaid lacquer box and Celedon vase. Archives, Foreign. Recd: Nov. 13, 1990. Est. value: $400.	His Excellency, Young Hoon Kang, Prime Minister of the Republic of Korea, Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
0489—Vice President and Mrs. Quayle.	Multiple items: Enamel box, framed picture and engraved bowl. Residence; for official use/display. Recd: May 7, 1990. Est. value: $450.	The Right Honorable Margaret Thatcher, Prime Minister and First Lord of the Treasury, United Kingdom of Great Britain, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90570—Vice President and Mrs. Quayle.	Multiple items: Hand painted quartz clock, amber earrings and pin. Residence; for official use/display. Recd: June 15, 1990. Est. value: $650.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90184—Vice President	Art work: Framed, hand stitched wall hanging, Old Executive Office Building; for official use/display. Recd: Feb. 13, 1990. Est. value: $600.	His Excellency, Hussain Mohammad Ershad, President of the People's Republic of Bangladesh, Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90868—Vice President	Art work: Reproduction of Precolumbian figurine, Archives, Foreign. Recd: Aug. 7, 1990. Est. value: $300.	His Excellency, Cesar Gaviria Trujillo, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90867—Vice President	Art work: Framed oil painting of a country scene. OEOB; for official use/display. Recd: Aug. 9, 1990. Est. value: $250.	Her Excellency Ertha Pascal Trouillot, President of the Republic of Haiti, Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
901191—Vice President	Household: Hand painted porcelain plate and stand. Archives, Foreign. Recd: Nov. 26, 1990. Est. value: $300.	The Honorable Shintaro Abe, Member of the Diet of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
901378—Vice President	Household: A gold washed tea set service with six porcelain cups, Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $1300.	His Highness, Saad Al-Abdullah Al-Salim Al-Sabah, The Crown Prince of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90379—Vice President	Art work: Oil painting titled "Yearnings". Archives, Foreign. Recd: Mar. 15, 1990. Est value: $592.	His Excellency Joaquim Alberto Chissano, President of the People's Republic of Mozambique, Mozambique.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90456—Vice President	Art work: Abstract oil painting by Julio Shebelut Calon, Archives, Foreign. Recd: Jan. 22, 1990. Est. value: $300.	His Excellency Guillermo A. Ford, the Second Vice President of the Republic of Panama, Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90468—Vice President	Household; Etched cobalt crystal bowl and lid. Archives, Foreign. Recd: Mar. 30, 1990. Est. value: $250.	His Excellency Tadeusz Mazowiecki, Prime Minister of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
901376—Vice President	Household: Gold washed tea service. Archives, Foreign. Recd: Dec. 29, 1990. Est. value: $3,000.	His Royal Highness Abdullah Ben Abdulaziz Alsaud, Crown Prince of Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
901380—Vice President	Weapon: Ceremonial sword and ornate sheath of 18K gold, inlaid ivory. Archives; Foreign. Recd; Dec. 30, 1990. Est. value: $10,000.	His Royal Highness Fahd Bin Abd Al-Aziz Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE VICE-PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
90470—Vice President	Household: Framed photo and a hand crafted wall hanging. Archives, Foreign. Recd: May 23, 1990. Est. value: $1600.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia, Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90597—Vice President	Art work: Framed abstract lithograph OEOB, for official use/display. Recd: Mar. 09, 1990. Est. value: $1400.	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90183—Vice President	Multiple items: Two wool rugs, two briefcases, a wall ornament, and an intricate handmade silver prayer necklace. Archives, Foreign. Recd: Feb. 5, 1990. Est. value: $1800.	His Excellency Ali Abdallah Salih, President of the Yemen Arab Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST01—William Kristol, Chief of Staff to the Vice President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST02—David Beckwith, assistant to the Vice President and Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST03—Carnes Lord, assistant to the Vice President for National Security Affairs.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST04—Jon Glassman, Assistant to the Vice President and Deputy Assistant for National Security Affairs.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST05—Craig Whitney, Assistant Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST06—Steven Purcell, Vice President's Photographer.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST07—Major Michael J. Nash, White House Physician.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST08—Lt. Col. Jeffrey McKitrick, Military Advisor to the Vice President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST09—Joanne Hilty, Staff Assistant and OVP Security Officer.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST10—Katherine E. Fauster, Special Assistant, National Security Affairs.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST11—Lcdr Brad Goetch, Military Aide to the Vice President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST12—Thomas J. Pernice, Deputy Assistant to the Vice President and Director of Advance.	18 Karat white gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $350.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
90ST13—Hugh Addington, Vice Presidential Advance, Vice President.	18 Karat white gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $350.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.

UNITED STATES SENATE

Report of Tangible Gifts—Calendar Year 1990

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert C. Byrd, President Pro Tempore	Decorative plate recd—January 19, 1990. Est. value—$250. Deposited with the Secretary of the Senate.	President Ozal, Government of Turkey	Refusal would likely cause offense or embarrassment
Do	Turkish handicraft rug, recd—Aug. 23, 1990. Est. value $400. Disposition: Display in Senator's Office.	Government of Turkey Foreign Minister Bozer.	Do.
Do	Antalay-made rug, recd—August 29, 1990. Est. value $200. Disposition: Display in Senator's Office.	Government of Turkey Governor Erol Tezcan.	Do
Roboert Dole, U.S. Senator	Enamel, copper and glazed metal Bonsai tree and vase, recd—July 26, 1990. Est. value—$120. Disposition: Display in Senator's Office.	K.C. Liu, Legislator-Yuan from Taiwan	Do.
Do	4-Volume set of leather-bound art books, recd—August 1, 1990. Est. value—$120. Disposition: Display in Senator's Office.	Rodrigo Borja, President of Ecuador	Do.
Do	Blue crystal vase, recd—March 29, 1990. Est. value—$600. Disposition: Display in Senator's Office.	Mr. Tadeusz Mazowiecki, Prime Minister of Poland.	Do.
Dennis DeConcini, U.S. Senator	Seriograph by Raul Neel, recd—May 1990. Est. value—$300. Disposition: House Annex 2, Room 237.	Government of Estonia	Do.
Dave Durenberger, U.S. Senator	Canvas oil painting recd—March 15, 1990. Est. value—$148. Disposition: Display in Senator's Office.	Hussain Muhammed Ershad, President of the People's Republic of Bangladesh.	Do.
Peter W. Galbraith, Professional Staff Member, Committee on Foreign Relations.	Woolen Rug, recd—January 29, 1990. Est. value—$250. Disposition: Display in Senator's Office.	Abdeslam Jaidi, Moroccan Ambassador to the United Nations.	Do.
Gordon J. Humphrey, U.S. Senator	Gray Rug, recd—May 1988. Est. value—$300. Deposited with the Secretary of the Senate.	President Zia of Pakistan	Do.
Do	Wooden Chest, recd—May 10, 1988. Est. value—$250. Deposited with the Secretary of the Senate.	Do	Do.
Do	Pakistani Rug, recd—July 22, 1987. Est. value—$400. Deposited with the Secretary of the Senate.	Babar W. Malik, Counselor of Pakistani Embassy.	Do.
Do	16 Books, recd—July 22, 1987. Est. value—$200. Deposited with the Secretary of the Senate.	Zia Al Haq, President of Pakistan	Do.
George J. Mitchell, U.S. Senator	Silver Dish, recd—March 7, 1990. Est. value—$175. Deposited with the Secretary of the Senate.	Giulio Andreotti, Prime Minister of Italy	Do.
Do	Cut glass, blue and white vase, recd—March 19, 1990. Est. value—$600. Deposited with the Secretary of the Senate.	Prime Minister Tadeusz Mazowiecki of Poland.	Do.
Do	4-Volume set of books on art, recd—July 24, 1990. Est. value—$116. Deposited with the Secretary of the Senate.	President Rodrigo Borja of Ecuador	Do.
Do	Silver cigarette box recd—January 11, 1990. Est. value—$350. Deposited with the Secretary of the Senate.	President Barco of Columbia	Do.
John McCain, U.S. Senator	Fresh floral arrangement recd—December 3, 1990. Est. value—$200. Deposited with the Secretary of the Senate.	Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia.	Do.
Daniel Patrick Moynihan, U.S. Senator	Moroccan carpet, recd—January 3, 1990. Est. value—$500. Disposition: Displayed in Senator's Office.	Kingdom of Morocco	Do.

UNITED STATES SENATE

Report of Travel or Expenses of Travel—Calendar Year 1990

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Mick Anderson, Legislative Assistant, Office of Senator Cranston.	Air transportation from Minsk to Grodno and return, Aug. 21–23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Richard Arenberg, Professional Staff Member, Office of Majority Leader.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Marsha Berry, Professional Staff Member, Committee on Appropriations.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
James Bond, Professional Staff Member, Subcommittee on Foreign Operations, Committee on Appropriations.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Richard H. Bryan, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Robert C. Byrd, U.S. Senator	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Erma Byrd, Spouse of Senator Byrd	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Thad Cochran, U.S. Senator	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Rose Cochran, Spouse of Senator Cochran.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Alan Cranston, U.S. Senator	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
James M. Cubie, Chief Counsel, Committee on Agriculture, Nutrition and Forestry.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Al Cumming, Legislative Assistant, Office of Senator Graham.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
C. Richard D'Amato, Counsel, International and National Security Policy.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Diane Dewhirst, Press Secretary to Majority Leader.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Jeanine Drysdale-Lowe, Deputy Sergeant At Arms, Office of Sergeant At Arms.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Penny Durenberger, Spouse of Senator Durenberger.	Food, lodging in country, Feb. 13–16, 1990.	Government of Uganda, President and Mrs. Yoweri, Museveni of Uganda, Africa.	Nonacceptance would cause donor embarrassment.
James H. English, Staff Director, Committee on Appropriations.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Carl Feldbaum, Administrative Assistant, Office of Senator Specter.	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Leon S. Fuerth, Jr., Legislative Assistant, Office of Senator Gore.	Food and lodging in country, Aug. 31–September 2, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Leah Gluskoter, Secretary to the Delegation, Office of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Albert Gore, Jr., U.S. Senator	Food and lodging in country, Aug. 31–September 2, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Do	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Tipper Gore, Spouse of Senator Gore	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Bob Graham, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Do	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Adele Graham, Spouse of Senator Graham.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Barbara Ann Grassley, Spouse of Senator Grassley.	Food and lodging in country, Feb. 13–16, 1990.	Government of Uganda, President and Mrs. Yoweri, Museveni of Uganda, Africa.	Nonacceptance would cause donor embarrassment.
Scott Harris, Professional Staff Member, Democratic Policy Committee.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1990

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Charlotte Holt, Executive and Personal Secretary, Office of the President Pro Tempore.	Transportation in country Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Edward M. Kennedy, U.S. Senator	Lodging in country, Mar. 25–27, 1990	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Herb Kohl, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Patrick J. Leahy, U.S. Senator	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Do	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Marcelle Leahy, Spouse of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Do	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of Soviet Union	Nonacceptance would cause donor embarrassment.
James P. Lucier, Minority Staff Director, Committee on Foreign Relations.	Air transportation from London, England to Muscat, Oman and return, Nov. 28–Dec. 1, 1990, including food and lodging in Muscat.	Government of Oman	Nonacceptance would cause donor embarrassment.
William J. Lynn, Legislative Assistant, Office of Senator Kennedy.	Lodging in country, Mar. 25–27, 1990	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Barbara A. Mikulski, U.S. Senator	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Ellen McCulloch-Lovell, Chief of Staff, Office of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Kevin McDonald, Scheduler, Office of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Kathleen McNally, Professional Staff Member, Office of the President Pro Tempore.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
George J. Mitchell, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Eric Newsom, Staff Director, Foreign Operations Subcommittee, Committee on Appropriations.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Jan Paulk, Director of Interparliamentary Services.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
James Lee Price, Senior Economist, Joint Economic Committee.	Food and lodging in country, Mar. 26–30, 1990.	Government of Sao Paulo, Brazil	Nonacceptance would cause donor embarrassment.
Charles H. Riemenschneider, Majority Staff Director, Committee on Agriculture, Nutrition and Forestry.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Timothy Rieser, Professional Staff Member, Foreign Operations Subcommittee, Committee on Appropriations.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Charles S. Robb, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Chris Sarcone, Chief Clerk, Committee on Agriculture, Nutrition and Forestry.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Terrence E. Sauvain, Deputy Staff Director, Committee on Appropriations.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Sarah Sewall. Professional Staff Member, Democratic Policy Committee.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Richard C. Shelby, U.S. Senator	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Do	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Annette Shelby, Spouse of Senator Shelby.	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Paul Simon, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Nancy E. Soderberg, Legislative Assistant, Office of Senator Kennedy.	Lodging in country, Mar. 25–27, 1990	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Arlen Specter, U.S. Senator	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1990

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joan Specter, Spouse of Senator Specter.	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Walter J. Stewart, Secretary of the Senate.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Do	Lodging and meals in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Sally Walsh, Deputy Director, Office of Interparliamentary Services.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Do	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Chester G. Atkins, Member of Congress.	3×5 Pakistani rug and silver bracelet with lapis stone. Rec'd January 16, 1989. Est. value—$250 (rug), $180 (bracelet). Deposited with Clerk of House..	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Chester G. Atkins, Member of Congress.	3×5 Pakistani rug. Rec'd October 3, 1989. Est. value—$250. Deposited with Clerk of House.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Beverly B. Byron, Member of Congress	3×5 Persian Knot Pakistani rug. Rec'd March 30, 1989. Est. value—$250. Approved for official display.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Barbara B. Kennelly, Member of Congress.	3×5 Pakistani rug. Rec'd March 30, 1990. Est. Value—$250. Approved for official display.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Lynn Martin, Member of Congress	3×5 Pakistani rug. Rec'd March 30, 1989. Est. value—$200. Approved for official display.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and ocurring outside the United States	Identify of foreign donor and government	Circumstances justifying acceptance
Lou Betts Bevill (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Chuck Douglas. Member of Congress	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela, Republic of Venezuela.	Fact-finding.
Mervyn Dymally, Member of Congress	Lodging at Royal Conference Palace in Saudia Arabia for 2 days.	Kingdom of Saudi Arabia	Fact-finding.
Janet Hall (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Linda Slattery (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Michael L. Synar, Member of Congress	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuala, Republic of Venezuela.	Fact-finding.
Carolyn Wolf (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Joel O. Benson, Rep. Tim Johnson	Food, lodging & transportation in People's Republic of China from August 4–18, 1990, to participate in U.S.-China Fnendship Program.	People's Republic of China	Mutual Education and Cultural Exchange Act (MECA).
Glenda C. Booth, Rep. Doug Walgren	Food, lodging & transportation in People's Republic of China from April 7 to 21, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and ocurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Robert S. Browne, House Banking Comm.	Food, lodging & transportation in People's Republic of China from August 3–19, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
Chuhan Chung, Rep. Jim Bates	Food, lodging & transportation in People's Republic of China from August 4–18, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
James K. Conzelman, Rep. Michael G. Oxley.	Food, lodging & transportation in U.S.S.R. from Feb 2 to 16, 1990.	Komsomol (Soviet Communist Youth League).	Exchange program.
George Crawford, Comm. on Rules	Food, lodging & transportation in People's Republic of China from April 6 to 20, 1990.	People's Republic of China	(MECA).
Elizabeth Fine, Comm. on Judiciary	Food, lodging & transportation in Moscow and Perm, U.S.S.R. for 6 days.	U.S.S.R.	Fact-finding.
Daniel P. Finn, Comm. on Foreign Affairs.	Food, lodging & transportation in Indonesia from August 19-Sept 3, 1990.	House of Representatives (DPR) Jakarta, Indonesia.	Fact-finding.
Matthew R. Fletcher, Comm. on Government Operations.	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela Republic of Venezuela.	Fact-finding.
Sandra Zeune Harris, Comm. on Government Operations.	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela, Republic of Venezuela.	Fact-finding.
John M. Heasley, House Banking Comm..	Food, lodging & transportation from May 5–19, 1990, to participate in European Community's Visitor Programme.	European Parliament and Commission of the European Community.	(MECA).
Theodore J. Jacobs, Comm. on Government Operations.	Food, lodging & transportation in People's Republic of China from April 9–17, 1990 to participate in U.S.-China Friendship Program.	People's Republic of China	(MECA).
Janet L. Lynch, Rep. Peter Kostmayer	Food, lodging & transportation in People's Republic of China from April 7–20, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
David A. Nathan, Rep. Constance Morella.	Food, lodging & transportation in Germany from April 20-May 5, 1990, to participate in U.S. Congress-German Bundestag exchange.	Germany	(MECA).
Douglas R. W. Norell, Rep. Byron Dorgan.	Food, lodging & transportation in People's Republic of China from April 9–17, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
Charles R. O'Regan, Rep Dante Fascell.	Food, lodging & transportation in People's Republic of China to participate in Chinese People's Institute of Foreign Affairs.	People's Republic of China	(MECA).
Franklin C. Phifer, Jr., Ways & Means Comm.	Food, lodging & transportation from May 5–19, 1990, to participate in European Community's Visitor Programme.	European Community	(MECA).
Matthew Pinkus, Comm. on Rules	Food, lodging & transportation in Germany from April 20-May 6, 1990, to participate in U.S. Congress-German Bundestag exchange.	Federal Republic of Germany	(MECA)
Thomas M. Parkhurst, Rep. Matthew McHugh.	Food, lodging & transportation from May 23 to June 1, 1990, in People's Republic of China.	People's Republic of China	(MECA)
Arthur J. Simonetti, Rep. Dick Shulze	Food, lodging & transportation in Taiwan from Nov 10–16, 1990.	Chinese Culture University, Taipei, Taiwan.	(MECA)
Scott Austin Spear, Rep. E. Clay Shaw	Food, lodging & transportation from Aug 4–19, 1990, in Republic of China.	People's Republic of China	(MECA)
Daniel B. Waggoner, Comm. on Agriculture.	Food, lodging & transportation in Korea from Dec 1–9, 1990.	Korean Institute for International Economic Policy.	(MECA)
Dalena Wright, Rep. Chester Atkins	Food, lodging & transportation from Jan 5–15, 1990 in Malaysia.	Institute of Strategic and International Studies of Malaysia.	(MECA)
Michael R. Wessel, Office of Majority Leader.	Food, lodging & transportation from Dec 9–19, 1990 to participate in European Community's Visitor Programme.	European Community Commission and European Parliament.	(MECA).

AGENCY: U.S. DEPARTMENT OF AGRICULTURE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Clayton Yeutter	Marano Venetian Glass Hand-Blown Bird. Sculpture of Seagull in various shades of gray, white and black with red beak. Seagull stands on bronze base with two sculptured fish imbedded in the base. Recd—August 26, 1990. Est. value—$250.00. Being stored in Secretary's office.	Raul Gardini Chairman and Chief Executive Officer, Ferruzi Group, Rome, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: U.S. DEPARTMENT OF THE AIR FORCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Anne N. Foreman, Under Secretary of the United States Air Force.	Turquoise scarob necklace, bracelet & earrings, Recd—June 17, 1990 Est. Value—$210,00. Approved for official use in the Office of the Under Secretary.	General Abou Taleb, Minister of Defense, Cairo, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Colonel James D. Jones, Jr., Commander, 1962d Communications Group, Kadena Air Base, Japan.	Cannon Autoboy camera, Serial #1865131. Recd—August 1, 1990 Est. Value—$240,00. Delivered to GSA for disposition January 4, 1991.	Hiroshi Ichihara, Executive Vice President of KDD, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth J. Keefer, Deputy Under Secretary of the United States Air Force for International Affairs.	Turquoise scarob necklace, bracelet & earrings. Recd—October 16, 1990. Est. Value—$210.00. Approved for official use in the Office of the Deputy Under Secretary.	General Abou Taleb, Minister of Defense, Cairo, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	Framed oil painting of Bangladesh boats. Recd—September 1, 1990. Est. Value—$75.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces	Ceramic coffee set (25-piece) with Bangladesh crest. Recd—September 1, 1990. Est. Value—$45,00. On official display at Headquarters United States Air Force, CVAP.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General & Mrs. Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	3-strand, 18-inch pink pearl necklace. Recd—September 1, 1990. Est. Value—$15.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	Muslin embroidered tablecloth with twelve napkins. Recd—September 1, 1990. Est. Value—$15.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	Jute carpet, 4 x 6, brown & burgundy. Recd—September 1, 1990. Est. Value—$125.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Necklace with detachable pendant, gold plate over silver encrusted with small pearls and pieces of ruby & tourmaline. Recd—November 2, 1990. Est. Value—$165.00. On official display at Quarters 7, Ft Myer, Virginia, official residence of Air Force Chief of Staff.	ACM S. K. Mehra, Chief of Staff, Indian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Indo Kerman rug, 5'3" by 3'0", basic colors: Blue, Ivory, and Rose. Recd—November 2, 1990. Est. Value—$165.00. On official display at Quarters 7, Ft. Myer, Virginia, official residence of Air Force Chief of Staff, pending disposition from GSA.	ACM S. K. Mehra, Chief of Staff, Indian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Colonel John L. Nidiffer, USCENTCOM/JA.	Oyster Perpetual Rolex watch. Recd—31 August 1987. Est. Value—$1,000.00. On official display in office of USCENTCOM/JA; awating disposition by GSA.	Bridadier General Matar, Salim Ahmed of United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. DEPARTMENT OF THE AIR FORCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald B. Rice, Secretary of the Air Force.	Two 2" Round silver dishes. Recd—October 19, 1990. Est. Value—$160.00. Approved for official use in the Office of the Secretary.	Major General Shaikh Khalifa, Minister of Defense, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Silver tea set, 14" round tray, 9" silver stand, 10" tea pot, 10" shaker, six 2" tall cups. Recd—October 19, 1990. Est. Value—$250.00. Approved for official use in the Office of the Secretary.	Major General Shaikh Khalifa, Minister of Defense, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	1½" Gold Kartouch. Recd—October 23, 1990. Est. Value—$190.00. Approved for official use in the Office of the Secretary.	Air Marshal Ahmed Nasr, Commander, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	8" x 6" Plaque with silver colored Kartouch mounted. Recd—October 23, 1990. Est. Value—$100.00. Approved for official use in the Office of the Secretary.	Air Marshal Ahmed Nasr, Commander, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Two 9" high silver candlestick holders. Recd—October 23, 1990. Est. Value—$200.00. Approved for official use in the Office of the Secretary.	Air Marshal Ahmed Nasr, Commander, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	¾" Gold Kartouch. Recd—October 23, 1990. Est. Value—$95.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Silver colored broach with dangling charms. Recd—October 23, 1990. Est. Value—$75.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Silver bird on silver chain. Recd—October 23, 1990. Est. Value—$25.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Key chain with colored crest on front. Recd—October 23, 1990. Est. Value—$20.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Colored crest inlayed in a 9" x 7" velvet case. Recd—October 23, 1990. Est. Value—$100.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff, United States Air Force.	Paki Persian rug, 7'2" by 4'6" panel design, basic colors mauve & blue. Recd—May 25, 1989. Est. Value—$650.00. On official display at Quarters 7, Ft Myer, Virginia, official residence of Air Force Chief of Staff.	Air Chief Marshal Hakimullah, Chief of Staff, Pakistani Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General & Mrs. Larry D. Welch, Chief of Staff, United States Air Force.	Brooch in the shape of pilot wings; gold over silver encrusted with small pieces of diamonds and rubies. Recd—May 15, 1989. Est. Value—$320.00. Located at the Office of the Chief of Staff, USAF, Room 4E925, Pentagon, Washington, DC 20330-5000.	Begum Hakimullah, wife of the Pakistani Air Force, Chief of Staff.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff, United States Air Force.	Paki Persian rug, 5'8" by 4'; colors: gray and tan. Recd—May 25, 1989. Est. Value—$395.00. On official display at Quarters 7, Ft Myer, Virginia, official residence of Air Force Chief of Staff.	Air Chief Marshal Hakimullah, Pakistani Air Force, Chief of Staff.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
MG W. D. Freeman, Jr., Project Manager, Saudi Arabian National Guard, APO New York 09038.	Baume & Mercier men's gold wristwatch and Baume & Mercier women's silver wristwatch. Recd—June 6, 1990. Est. Value—$5,700.00. Reported to GSA December 31, 1990; pending transfer to GSA.	HRH Prince Miteb bin Abdullah bin Abdul Aziz, Commandant of the King Khalid Military Academy.	Non-acceptance would have caused embarrassment to donor.
BG Robert J. Jellison, Commander, 19th Support Command, APO San Francisco 96212.	One (1) Earthenware jar (Silla Dynasty replica). Recd—June 1990. Est. Value—$220.00. Approved for official use.	Mrs. Ahn, Byung-Hyup, wife of the President of the Dong Hyup Machinery Company, Korea.	Non-acceptance would have caused embarrassment to donor.
BG Robert J. Jellison, Commander, 19th Support Command, APO San Francisco 96212.	One (1) 8-panel oriental-style screen. Recd—June 1990. Est. Value—$220.00. Approved for official use.	Mr. Suh, Bo-Yong, President of the Korean Oriental Art Association.	Non-acceptance would have caused embarrassment to donor.
MG J. M. Rockwell, Vice Director, Defense Communications Agency.	Carved Ivory Tusk & five carved, ivory bust. Recd—September 1976. Est. Value—$700.00. Reported to GSA December 31, 1990; pending transfer to GSA.	BG Katsuva Wa-Katsivira, Chief of Staff, Zaire.	Gift delivered to this office July 1990. Non-acceptance would have caused embarrassment to donor.
COL W. Dan Snell, Commander, Seventh Region, U.S. Army Criminal Investigation Command, APO San Francisco 96301.	Korean Ceremonial Saber. Recd—May 18, 1990. Est. Value—$210.00. Reported to GSA; approved for official use.	Superintendent Hong, President of the Korean National Police College.	Non-acceptance would have caused embarrassment to donor.
GEN Carl W. Stiner, Commander in Chief, U.S. Special Operations Command, MacDill Air Force Base, Florida 33608-6001.	CZ 9mm 75 pistol. Recd—July 17, 1990. Est. Value—$200.00. Reported to GSA; pending transfer to GSA.	LTG Slimak, Chief of the Army General Staff, Czechoslovakia.	Non-acceptance would have caused embarrassment to donor.
Mr. Michael P. W. Stone, Secretary of the Army.	Embroidered silk screen, 2 panels, each 31½" × 63" yellow with bird design; Green vase, 12"; and Commemorative plaque, 5¾" × 7¾". Recd—March 1990. Est. Value—$495.00. Delivered to GSA December 14, 1990.	Lee Sang Moon, Minister of National Defense, ROK.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
GEN Carl E. Vuono, Chief of Staff, U.S. Army, Washington, DC 20310.	Silver dagger. Recd—November 8, 1990. Est. Value—$1,575.00. Reported to GSA; approved for official use.	LTG Dimitrios Skarvelis, Chief, Hellenic Army General Staff.	Non-acceptance would have caused embarrassment to donor.
GEN Carl E. Vuono, Chief, of Staff, U.S. Army, Washington, DC 20310.	Bust of Apollo. Recd—November 8, 1990. Est. Value—$225.00. Reported to GSA; approved for official use.	LTG Dimitrios Skarvelis, Chief, Hellenic Army General Staff.	Non-acceptance would have caused embarrassment to donor.

AGENCY: CENTRAL INTELLIGENCE AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Indentity of foreign donor and government	Circumstances justifying acceptance
Agency Employee	Oriental mottled green hardstone mountain village on carved wood stand, H: of village 10⅛", L: 16½". Estimated value: $250.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
William H. Webster, Director, CIA	German GS 7.62 mm semi-automatic rifle, encased. Estimated value: $750.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
William H. Webster, Director, CIA	Pair 925 sterling figures of fighting cocks; together with cartouche shaped mirrored plateau, L: of plateau 12⅛". Estimated value: $350.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
William H. Webster, Director, CIA	Herend tea set, pattern MHG 613. Consisting of teapot, covered sugar, creamer, six cups and six saucers, encased. Estimated value: $350.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: COMMODITY FUTURES TRADING COMMISSION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Indentify of foreign donor and government	Circumstances justifying acceptance
Andrea Corcoran, Director, Division of Trading and Markets.	Recd.—May 9–10, 1990. Est. Value—$268.00. Expended for lodging, meals, and transportation.	Department of Trade & Industry, England.	Attendance at the Wilton Park Meeting of International Securities Regulators.
Dennis Klejna, Director, Division of Enforcement.	Recd.—May 9–10, 1990. Est. Value—$268.00. Expended for lodging, meals, and transportation.	Department of Trade & Industry, England.	(Same as above)
Daniel Waters, Assistant Director, Division of Enforcement.	Recd.—May 9–10, 1990. Est. Value—$268.00. Expended for lodging, meals, and transportation.	Department of Trade & Industry, England.	(Same as above).

AGENCY: DEPARTMENT OF DEFENSE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John A. Betti, Under Secretary of Defense for Acquisition.	Three (3) hand-painted porcelain Italian soldiers, trimmed with gold, approx. 11" high, signed by Carlino Sciacca. Rec'd—October 23, 1990. Est. value—$375. Reported to GSA November 19, 1990; donee requested option to buy the gift. Arrangements are being made with GSA for the sale.	General Luigi Stefani, Secretary General of Defense, and NATO National Armament Director, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. John A. Betti, wife of the Under Secretary of Defense for Acquisition.	Black leather handbag by Gucci. Rec'd—November 28, 1990. Est. value—$300. Reported to GSA January 7, 1991; pending transfer to GSA.	General Luigi Stefani, Secretary General of Defense, and NATO National Armament Director, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lt. Col. Mark L. Brophy, Near Eastern and South Asian Affairs, Office of the Assistant Secretary of Defense (International Security Affairs).	Men's gold Omega watch, with inscription. Rec'd—January 22, 1990. Est. value—$500. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	R.H. Royal fly fishing rod, single tip, 225cm, #4–5 line, G. Sch, 11–89, bamboo with cork handle, in round case. Rec'd—February 2, 1990. Est. value—$350. Gift was purchased from GSA by donee April 28, 1990.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Swiss wall clock, with mounting shelf, cranberry-colored wood, with floral designs. Rec'd—February 5, 1990. Est. value—$600. Approved for official display in office of donee.	Kaspar Villiger, Chief, Department of Military, and Mrs. Villiger, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Large Oriental wooden screen, with paintings of cranes and greenery, red background and white border, with five panels, approx. 6' tall. Rec'd—February 15, 1990. Est. value—$1100. Stored in the vault; pending official display.	Lee Sang Hoon, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Ladies' earthtone tissot rock watch, Swiss quartz, with tan straps (R150). Rec'd—April 13, 1990. Est. value—$295. Delivered to GSA June 21, 1990.	Mrs. Kaspar Villiger, wife of the Chief, Department of Military, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Cast iron replica of a horse and polo jockey on stand. Rec'd—July 31, 1990. Est. value—$250. Reported to GSA January 18, 1991; pending transfer to GSA.	Humberto Romero, Minister of Defense, Argentina.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense	Large black leather-bound book of Togolaise stamps, "Republique Togolaise, Album Philatelique Souvenir," containing approx. 124 pages of stamps in various denominations, sizes, and shapes commemorating various events. Binder is approx. 13" x 10½". Rec'd—August 1, 1990. Est. value—$300. Reported by GSA August 29, 1990; pending transfer to GSA.	HE Gnassingbe Eyadema, President of the Republic of Togo.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Full-size Togolaise quilt, made with various flags sewn together, and the letters "OTAN" (French for NATO) sewn on it. Rec'd—August 1, 1990. Est. value—$250. Reported to GSA August 29, 1990; pending transfer to GSA.	HE Gnassingbe Eyadema, President of the Republic of Togo.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Large decorative faience (vase), with lid, Delft blue and white, with certificate of authenticity: "Ceramica de Conimbriga," approx. 12½" high x 10" diameter. Rec'd—September 22, 1990. Est. value—$325. Reported to GSA October 23, 1990; pending transfer to GSA.	Fernando Nogueira, Minister of Defense, and Mrs. Nogueira, of Portugal.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Purse by Loewe, tan suede trimmed with dark brown leather and dark brown leather handles, approx. 12½" x 10". Rec'd—September 23, 1990. Est. value—$275. Reported to GSA October 23, 1990; pending transfer to GSA.	Narcis Serra y Serra, Minister of Defense, and Mrs. Serra, of Spain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Dagger, black and brass, approx. 13½" long, in small wooden box. Rec'd—October 16, 1990. Est. value—$75. Reported to GSA December 6, 1990; pending transfer to GSA.	Dmitriy Yazov, Minister of Defense, and Mrs. Yazov, of the Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Statue of General Survorov, black metal, approx. 14" high, in large box. Rec'd—October 16, 1990. Est. value—$350. Reported to GSA December 6, 1990; pending transfer to GSA.	Dmitriy Yazov, Minister of Defense, and Mrs. Yazov, of the Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Small lacquer trinket box with landscape scene painted on the top, approx. 5" x 8". Rec'd—October 17, 1990. Est. value—$150. Reported to GSA December 5, 1990; pending transfer to GSA.	Director Golovkina, State Ballet Academy, Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Necklace of amber beads, approx. 13" long. Rec'd—October 17, 1990. Est. value—$150. Reported to GSA December 5, 1990; pending transfer to GSA.	Director Golovkina, State Ballet Academy, Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Sword with handle of brass eagle head, approx. 29" long, in long dark green box Rec'd—December 4, 1990. Est. value—$300. Reported to GSA January 18, 1991; pending transfer to GSA.	RADM Piotr Kolodziejczyk, Minister of National Defense, Republic of Poland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Arthur Hughes, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Men's Rolex Datejust Oyster Watch, 18K gold and stainless steel, serial 16233, Rec'd—February 3, 1990. Est. value—$2,920. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Arthur Hughes, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Single strand of cultured pearls, approx. 18" long, in large pink velour case. Rec'd—February 3, 1990. Est. value—$350. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
CAPT John J. Hyland, USN, Military Assistant to the Assistant Secretary of Defense (International Security Affairs).	Men's Rolex Datejust Oyster Watch, 18K gold and stainless steel, serial 16233. Rec'd—January 22, 1990. Est. value—$2,920. Reported to GSA June 28, 1990; transferred to IRS October 10, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
CAPT John J. Hyland, USN, Military Assistant to the Assistant Secretary of Defense (International Security Affairs).	Single strand of cultured pearls, approx. 18" long, in large pink velour case. Rec'd—January 22, 1990. Est. value—$350. Reported to GSA June 28, 1990; transferred to IRS October 10, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
H. Diehl McKalip, Director, Security Assistance Operations, Defense Security Assistance Agency.	Men's Rolex Datejust Oyster Watch, 18K gold and stainless steel, serial 16233; and black leather credit card wallet. Rec'd—January 22, 1990. Est. value—$2,947.50. Reported to GSA July 23, 1990; pending transfer to GSA.	The Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
H. Diehl McKalip, Director, Security Assistance Operations, Defense Security Assistance Agency.	Single strand of cultured pearls, approx. 18" long, in large pink velour case. Rec'd—January 22, 1990. Est. value—$350. Reported to GSA July 23, 1990; pending transfer to GSA.	The Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	Sabre with bone handle and brass design, in long wooden box. Rec'd—September 14, 1990. Est. value—$500. Reported to GSA October 18, 1990; pending transfer to GSA.	His Highness Shaikh Hamad Bin-Isa Al Khalifa, Crown Prince and Commander-in-Chief, Bahrain Defense Forces, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	Silver-plated tea service, in red box (10-piece). Rec'd—September 14, 1990. Est. value—$250. Reported to GSA November 9, 1990; pending transfer to GSA.	Major Abdulla Al Khalifa, Commander of Bahrain Amiri Air Force, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	35 caliber revolver (Serial #65023), in black box. Rec'd—October 10, 1990. Est. value—$300. Reported to GSA November 9, 1990; pending transfer to GSA.	LTG Heinz Haesler, Chief of the General Staff, Swiss Armed Forces, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	Sabre with brass handle and brass design, in long burgundy case lined with red velvet. Rec'd—December 11, 1990. Est. value—$400. Reported to GSA January 23, 1991; pending transfer to GSA.	Lt. Gen. Kalman Lorincz, Commander, Hungarian Home Defense Forces, Hungary.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Men's 18K gold Rolex watch, President Model, Serial 18238, in leather case, with leather notebook and handkerchief. Rec'd—January 22, 1990. Est. value—$11,700. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Silver-plated tea service, in red box (10-piece). Rec'd—January 22, 1990. Est. value—$250. Donee purchased gift from GSA July 13, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Double-strand, cultured pearl necklace, with gold clasp, approx. 18" long, in pink velour case, Rec'd—January 22, 1990. Est. value—$700. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Framed mosaic, approx. 37" x 25". Rec'd—June 6, 1990. Est. value—$275. Approved for official display in office of donee.	Abdallah Kallel, Minister of National Defense, Tunisia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Pakistani carpet, approx. 6' x 9'3", rose, beige, blue and light brown, with fringes. Rec'd—January 29, 1990. Est. value—$1900. Approved for official display in office of donee.	Minister of Defense, Jallani, Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Ceremonial bedouin knife, sterling silver and gold-plated, approx. 12" long, in blue velour box. Rec'd—March 22, 1990. Est. value—$300. Approved for official display in office of donee.	His Highness Mohammed Bin Zayed Al Nahyan, Commander, Air Force/Air Defense, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul Wolfowitz, Under Secretary of Defense for Policy.	Black leather Samsonite attache case. Rec'd—December 6, 1990. Est. value—$150. Reported to GSA January 8, 1991; pending transfer to GSA.	'Ali Hasan al-Sha'ir, Minister of Information, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy.	18K gold cuff links, with Saudi Arabian emblem. Rec'd—December 6, 1990. Est. value—$400. Reported to GSA January 8, 1991; pending transfer to GSA.	'Ali Hasan al-Sha'ir, Minister of Information, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Barbara Yoon, Program Manager, Defense Science Office, Defense Advanced Research Projects Agency.	Japanese currency (200,000 yen). Rec'd—September 2, 1990. Est. value—$1,463. Deposited with the Department of the Treasury October 25, 1990.	A representative of the Japan Technology Transfer Association (an agency sponsored by the Japanese Government).	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: FEDERAL DEPOSIT INSURANCE CORPORATION

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ronald H. Ball, Bank Examination Training Specialist.	Cartier gold stylo plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard E. Dunn, Bank Examiner	Cartier gold stylo plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William C. Keller, Review Examiner	Cartier gold stylo plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Keith B. Nothstein, Bank Examiner	Cartier gold stylo plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert V. Shumway, Deputy to the Director.	Cartier gold stylo plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert V. Shumway, Deputy to the Director.	Nigerian face mask. Recd—August 15, 1990. Est. Value $150. Retained for official display.	Nigerian Deposit Insurance Company, Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Helen T. West, Secretary to the Deputy to the Director.	Brown leather pocketbook. Recd—August 15, 1990. Est. Value $50. Reported to GSA December 14, 1990; pending transfer to GSA.	Nigerian Deposit Insurance Company, Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. GENERAL ACCOUNTING OFFICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Kay E. Brown, Senior Evaluator	Ivory necklace and earrings. Recd.—October 20, 1990. Est. Value—$300.00. Seized by U.S. Customs, Washington, DC.	Brigadier General (retired), Abdelrahman Sir al-Khatim, Sudan's Commissioner for Refugees.	Non-acceptance would have caused embarrassment to the governments of Sudan and the United States.

AGENCY: U.S. INFORMATION AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bruce Gelb, Director	Externa wrist watch and pearl bracelet. Recd.—Sept. 23, 1990. Est. Value—$700 (watch), $700 (bracelet). Reported to GSA January 18, 1991.	Tariq Almoayed, Minister of Information, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. INFORMATION AGENCY—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Philip T. Balasz, Chief, Planning & Evaluation Branch, Office of Engineering, Voice of America.	Wrist watch. Recd.—Sept. 23, 1990. Estimated Value—$600. Reported to GSA January 18, 1991.	Same as above.....	Same as above.

AGENCY: THE LIBRARY OF CONGRESS

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
1. James H. Billington, The Librarian of Congress and Mrs. Billington.	Recd.—June 25-July 4, 1990. Est. Value—$6,256. Expended for airfare, hotel and meals.	Library of the Finnish Parliament; Helsinki University Library; Ministry for Foreign Affairs, Finland.	To become acquainted with the Library and the Parliament; to visit Helsinki University Library; to talk about the Library of Congress with Finnish research librarians.
2. James H. Billington, The Librarian of Congress and Thomas K. Billington (son).	Recd.—August 10–17, 1990. Est. Value—$957. Expended for hotel, meals and incidentals.	U.S.S.R. State Education Committee, U.S.S.R.	Honored guest at International Association of Teachers of Russian Language and Literature (MAPRAIL) conference.
James H. Billington, The Librarian of Congress and Thomas K. Billington (son).	Recd.—August 15, 1990. Est. Value—$132. Expended for airfare, meals.	U.S.S.R. Academy of Sciences Library, U.S.S.R.	To review progress made toward fire disaster recovery of Library of Academy of Sciences, Leningrad.
James H. Billington, The Librarian of Congress and Thomas K. Billington (son).	Recd.—August 18–25, 1990. Est. Value—$1,122. Expended for airfare, hotels, meals.	Goskompechat (State Committee for Press), U.S.S.R.	Visit Ural State University, meet with local state deputies, visit U.S.S.R. Academy of Sciences (Ural Branch), visit State University Library in Irkutsk, and meet with top district officials.
James H. Billington, The Librarian of Congress.	Recd.—September 23–27, 1990. Est. Value—$1,000. Expended for hotel, meals.	Australian National Library, Canberra, Australia.	Visit to National Library of Australia; visit to Library of New South Wales.

AGENCY: OFFICE OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Herbert D. Kleber, Deputy Director, Office of Demand Reduction.	Small metal paperweight, shaped like basket of flowers. Recd—November 17, 1990. Est. value—$250. Reported to GSA through White House Gift Office.	Fiorenzo Angelini, President, Pontificum Consilium de Apostolatu, The Vatican.	Gift was presented to all participants in Vatican-sponsored conference. Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

Report of Trangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Captain Donald A. Dyer, USN, Deputy Chief of Staff, Plans & Policy, Supreme Allied Commander Atlantic, Norfolk, VA.	Rolex oyster perpetual date just watch. Recd—February 12, 1990. Est. Value—$3,675. Transferred to IRS October 10, 1990.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral William M. Fogarty, USN, Commander Joint Task Force Middle East.	Two silver, hand-crafted Omani Khunjars (daggers). Recd—January 7, 1990. Est. Value—$300. Displayed on board the flagship USS LASALLE (AFG 3).	Commodore Badr, Commander East Fleet, Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral William M. Fogarty, USN, Commander Joint Task Force Middle East.	Wooden Model of traditional Gulf dhow (sailing vessel). Recd—November 1, 1989. Est Value—$250. Displayed at Commander, Joint Task Force Middle East.	Al Fattah Al Bader, Chairman Kuwait Oil Tanker Company, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

Report of Trangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
H. Lawrence Garrett III, Secretary of the Navy.	Silver-plated tea service with tray in a red velvet box. Recd—November 5, 1990. Est. Value—$400. Being held in Office of General Counsel pending transfer to GSA for disposition.	Major General Shaikk Khalifa bin Ahmed Al-Khalifa, Mininster of Defense, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Grant A. Sharp, USN, Director, Plans and Policy, U.S. Central Command, MacDill AFB, FL.	Rolex oyster perpetual date just watch. Recd—January 21, 1990 Est. Value—$3000. Transferred to FBI May 1, 1990.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Grant A. Sharp, USN, Director, Plans and Policy, U.S. Central Command, MacDill AFB, FL.	String of pearls. Recd—January 21, 1990. Est. Value—$550. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Louis E. Thomassey, USN, Commanding Officer, USS FORRESTAL (CV 59).	American Eagle $50 gold coin. Recd—February 10, 1990. Est. Value—$500. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	La Banda Di Conobbio Band, Paradiso, Lugano, Switzerland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral C.A.H. Trost, USN, Chief of Naval Operations.	9mm POFMP5 Serial A41745 Automatic weapon in wood case with sling and two magazines. Recd—August 1988. Est. Value—$2500. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Pakistan Chief of Naval Operations	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral C.A.H. Trost, USN, Chief of Naval Operations.	Silver plated Automatic 9MM weapon, Serial 0226 in brown leather case with sling and two magazines. Recd—July 1987. Est. Value—$2000. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Pakistan Chief of Naval Operations	Non-acceptance would have caused embarrassment to donor and U.S Government.

AGENCY: PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor or government	Circumstances justifying acceptance
M.J. Brodie, Executive Director	Received—January 9-14, 1990. Estimated value—$1110.00. Expended for airfare, hotel and meals.	Mayor Manuel C. Solis, Mayor: Mexico City.	Mayor Solis requested analysis of three major urban development projects in Mexico City involving historic preservation and new development, in view of lessons of PADC's experiences in Washington, DC.

AGENCY: DEPARTMENT OF STATE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lucy Abbott, Foreign Service Officer	Yves Saint Laurent woman's watch. Recd—10/90. Est. value—$220.00. In Office of Protocol pending delivery to GSA.	Princess: Saudi Arabia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Book: Rubaiyat of Omar Khayyam. Recd—01/16/90. Est. value—$300.00. In Office of Protocol pending delivery to GSA.	Prince Bandar, Ambassador: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Piece-work double-barrelled sport gun. Recd—02/08/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Eduard Shevardnadze, Foreign Minister: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued.

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State.....	Parka-Camel tan w/blue cover/Book: Canada. Recd—02/11/90. Est. value—$340.00. In Office of Protocol pending delivery to GSA.	Joe Clark, Foreign Minister: Canada	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Crystal Vase—22". Recd—02/20/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Vaclav Havel, President: Czechoslovakia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Bone carving: Moose on stand. Recd—04/06/90. Est. value—$250.00. In Office of Protocol pending delivery to GSA.	Eduard Shevardnadze Foreign Minister: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Silver box w/wood inside, picture of "Die Paulskirch In Frankfurt" on front. Recd—05/05/90. Est. value—$375.00. In Office of Protocol pending delivery to GSA.	Hans-Dietrich Genscher, Foreign Minister: Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	6 cups/saucers-commemorative edition, Limoges China Recd—04/19/90. Est. value—$510.00. In Office of Protocol pending delivery to GSA.	Francois Mitterrand, President: France	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Oil painting of vase of flowers 2'x 2'. Recd—05/19/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Eduard Shevardnadze, Foreign Minister: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Leather frame. Recd—07/10/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Margaret Thatcher, Prime Minister: United Kingdom.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Silver Hermes box. Recd—07/17/90. Est. value—$250.00. In Office of Protocol pending delivery to GSA.	Roland Dumas, Foreign Minister: France.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Silver pen set. Recd—09/15/90. Est. value—$300.00. In Office of Protocol pending delivery to GSA.	Helmut Kohl, Chancellor: Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Tea set: Herend 6-cups/6-saucers/tea pot/creamer/sugar dish. Recd—10/18/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Jozsef & Mrs. Antall, Prime Minister & Mrs.: Hungary.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Watch-cufflinks: stainless steel & gold Recd—11/05/90. Est. value—$2700.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Isa Bin Salman, Amir: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Cufflinks: Gold with pearl/JAB Initials. Recd—11/05/90. Est. value—$1000.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Khalifa bin Salman, Prime Minister: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	Briefcase: Leather. Recd—11/30/90. Est. value—$260.00. In Office of Protocol pending delivery to GSA.	Captain John S. Latsis, Co-host for NATO Summit: United Kingdom.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State.....	3 bottles vodka/2 cans caviar/tole tray Recd—12/19/90. Est. value—$325.00. In Office of Protocol pending delivery to GSA.	Alexander & Mrs. Bessmertnkyh Ambassador and Mrs.: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Pearls: graduated double stand W/gold clasp. Recd—11/05/90. Est. value—$1800.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Isa bin Salman, Amir: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	2 pearls in lacquered oyster shell w/gold trim. Recd—11/04/90. Est. value—$1500.00. In Office of Protocol pending delivery to GSA.	Al Kahlifa Khalifa bin Salman, Prime Minister: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Parka—Camel tan w/blue cover, scarf, hat. Recd—02/11/90. Est. value—$340.00. In Office of Protocol pending delivery to GSA.	Joe Clark, Foreign Minister: Canada	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Handbag—Fendi black leather. Recd—03/06/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Mrs. Andreotti, Wife of Prime Minister: Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	24kt. orchid brooch w/pearl. Recd—04/26/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Mrs. Perez, Wife of President: Venezuela.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Reginald Bartholomew, Under Secretary for Security Assistance, Science and Technology.	Ceremonial curved knife and scabbard. Recd—03/21/90. Est. value—$275.00 approved for Official Use.	H.H. Sheikh Mohammed: United Arab Emirates.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Henry Clarke, Charge d'Affaires Romania.	Palekh lacquer plate. Recd—7/89. Est. value—$350.00. In Office of Protocol pending delivery to GSA.	Anatoly Sokolov, Soviet Economist: CMEA Institute.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Jennifer A. Fitzgerald, Deputy Chief of Protocol.	Silver and orange bead necklace. Recd—2/12/90. Est. value—$200.00+. In Office of Protocol pending delivery to GSA.	Saleh, President: Yeman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Chas. W. Freeman, U.S. Ambassador, Saudi Arabia.	1 pair 18k gold cufflinks with emblem of Saudi Arabia. Recd—12/4/90. Est. value—$400.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Chas. W. Freeman, U.S. Ambassador, Saudi Arabia.	1 Baume & Mercier man's wrist watch. Recd—12/4/90. Est. value—$1000.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Chas. W. Freeman, Wife of U.S. Ambassador, Saudi Arabia.	1 Longines woman's 18k gold wrist watch. Recd—12/4/90. Est. value—$4500.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Milton Frank, American Ambassador, Nepal.	Brass lion mounted on wood w/plaque. Recd—9/89. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Minister of Foreign Affairs: Nepal	Non-acceptance would have caused embarrassment to donor & U.S. Government.
L. Ebersole Gaines, Consul General, Bermuda.	Chopard man's wrist watch. Recd—12/19/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. L. Ebersole Gaines, Wife of U.S. Consul General, Bermuda.	Baume & Mercier woman's wrist watch. Recd—12/19/90. Est. value—$3000.00. In Office of Protocol pending delivery to GSA.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. L. Ebersole Gaines, Wife of U.S. Consul General, Bermuda.	Double strand of graduated pearls. Recd—12/19/90. Est. value—$1800.00. In Office of Protocol pending delivery to GSA.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John H. Kelly, Assistant Secretary of State (NEA).	Clam shell with a Bahraini pearl inside. Recd—5/14/90. Est. value—$250.00. In Office of Protocol pending delivery to GSA.	Tariq Abd al-Rahman al-Muayyid, Minister of Information: Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John H. Kelly, Assistant Secretary of State (NEA).	Tunisian Carpet—9'×11'—. Recd—05/23/90. Est. value—$350.00. Approved for Official Use.	Sine el Abidine Ben Ali, President: Tunisia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Robert M. Kimmitt, Under Secretary for Political Affairs.	Wool carpet with "lion" design (3'×2.5'). Recd—12/18/90. Est. value—$500.00. In Office of Protocol pending delivery to GSA.	Mohamed Sidiq Al-Mashat, Ambassador to United States: Iraq.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Eugene J. McAllister, Assistant Secretary, Economic and Business Affairs.	Brown Oriental rug (5'×7'). Recd—7/23/90. Est. value—$400.00. Approved for Official Use.	A.G.N. Kazi, Deputy Commissioner of Minister of Planning and Development: Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John D. Negroponte, U.S. Ambassador, Mexico.	Hand-made boots by Montana. Recd—12/90. Est. value—$1,500.00. In Office of Protocol pending delivery to GSA.	Governor of Guanajuato	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John D. Negroponte, U.S. Ambassador, Mexico.	Hand-made leather jacket with fringe. Recd—12/90. Est. value—$500.00. In Office of Protocol pending delivery to GSA.	Governor of Guanajuato	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. John D. Negroponte, Wife of U.S. Ambassador, Mexico.	Hand-made leather jacket/skirt/vest. Recd—12/90. Est. value—$650.00. In Office of Protocol pending delivery to GSA.	Governor of Guanajuato	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Christopher Phillips, Wife of U.S. Ambassador, Brunei.	18k gold ruby and diamond earrings and ring. Recd—10/11/90. Est. value—$3,500.00. In Office of Protocol pending delivery to GSA.	Wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Thomas R. Pickering, Ambassador to United Nations.	Baume & Mercier watch. Recd—7/18/90. Est. value—$1,800.00. In Office of Protocol pending delivery to GSA.	The Emir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Verner Reed, Chief of Protocol	Sterling Silver picture frame (8x10). Recd—2/3/89. Est. value—$190.00. In Office of Protocol pending delivery to GSA.	Takeshita, Prime Minister: Japan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Verner Reed, Chief of Protocol	18k gold Longines man's wrist watch, 18k gold ring, 18k gold cufflinks. Recd—11/2/90. Est. value—$6,000.00. In Office of Protocol pending delivery to GSA.	General Mohamed Al-Shaikh, Chief of Protocol: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Joseph Verner Reed, Chief of Protocol	18k gold cufflinks and Samsonite black leather briefcase. Recd—11/26/90. Est. value—$900.00. In Office of Protocol pending delivery to GSA.	Ali Hassan Alshaer, Minister of Information: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Teresita C. Schaffer, Deputy Assistant Secretary, NEA.	Ruby bracelet. Recd—4/13/90. Est. value—$1,200.00. In Office of Protocol pending delivery to GSA.	Bhutto, Prime Minister: Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Peter Secchia, U.S. Ambassador, Italy	Sterling silver grape bunch. Recd—6/19/90. Est. value—$1,200.00. Approved for Official Use.	Tea Albini of Assessore Allo Sport—Comune de Firenze.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Matthew D. Smith, Director, White House Liaison.	Sterling silver platter. Recd—11/90. Est. value—$1,200.00. In Office of Protocol pending delivery to GSA.	Sultan of Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Matthew D. Smith, Director, White House Liaison.	Black leather briefcase. Recd—11/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Sultan of Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Abraham D. Sofaer, Legal Adviser	Egyptian silk rug: blue, ivory, rust (142x86 centimeters). Recd—4/20/89. Est. value—$1,000.00. In Office of Protocol pending delivery to GSA.	Osama Elbaz, Advisor to President Hosni Mubarak: Egypt.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Peter Tomsen, Special Envoy	Afghan carpet, blue, burgundy and gold. Recd—5/90. Est. value—$1,800.00. Approved for Official Use.	President S. Mojadeddi, Afghan Interim Government.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for Public Affairs.	Bohemian candy dish. Recd—2/9/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Jiri Dienstbier, Minister of Foreign Affairs: Czechoslovakia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for Public Affairs.	Double sided bronze die used as a tool for manufacturing Roman objects. Recd—2/10/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Bulgarian Government	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for Public Affairs.	Sterling silver business card holder. Recd—5/7/90. Est. value—$483.00. In Office of Protocol pending delivery to GSA.	Hans-Dietrich Genscher, Vice Chancellor of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for public affairs.	18k gold earrings of emblem of Saudi Arabia and 18k gold & silver Baume & Mercier woman's wrist watch. Recd—11/30/90. Est. value—$3,700.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz, Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Agnes Warfield, Deputy Assistant Chief of Protocol.	Silver and orange bead necklace Recd—2/12/90. Est. value—$200.00+. In Office of Protocol pending delivery to GSA.	Saleh, President: Yemen	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Malcolm R. Wilkey, U.S. Ambassador to Uruguay.	Gold replica coin of 1825 Uruguay 5 peso coin .900 gold. Recd—5/9/90. Est. value—$600.00. In Office of Protocol pending delivery to GSA.	Foreign Minister: Uruguay	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Benedicte Valentiner, General Manager, Blair House.	Green handtooled leather purse, by Loewe. Recd—10/20/89. Est. value—$300.00. In Office of Protocol pending delivery to GSA.	Felipe Gonzales, Prime Minister: Spain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: USTR

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carla A. Hills, Ambassador USTR	4/29/90 Japanese Trade Minister Muto gave gold pin with pearls ($300.00) on display in USTR's Conference Room (given along with a doll on a wooden boat).	Japanese Trade Minister	Presented at meeting in Washington, D.C.; accepted to avoid cultural misunderstanding.
Myles R.R. Frechette, Assistant U.S. Trade Representative for Latin America, the Caribbean and Africa	Airfare; October 6–11, 1990; $2,702	Argentine Council on International Relations.	The Council is a non-profit, academic institution. One of its purposes is to promote the study of international relations. It is not subject to the Argentine government or any other government control. There was no conflict of interest.

AGENCY: DEPARTMENT OF TRANSPORTATION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Master Chief J.J. Mason, Senior Instructor, U.S. Coast Guard, Heavy Weather Training School.	$7,211 for air travel, meals, lodging and transportation. Received—September 19–October 9, 1990.	Wellington Sea Rescue Service, Inc., New Zealand.	To lecture and attend the 14th Annual Conference of the New Zealand Coast Guard Federation.

AGENCY: DEPARTMENT OF THE TREASURY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor or government	Circumstances justifying acceptance
Nicholas Brady, Secretary	Pen and pencil set. Rec'd—April 3, 1990. Est. value $280. Retained by Treasury for official use.	Otto Stich, Finance Minister, Switzerland.	Non-acceptance embarrasses donor and U.S. Govt.
Nicholas Brady, Secretary	Engraved Lalique Crystal Dove. Rec'd—June 20, 1990. Est. value $1,810. Retained by Treasury for official use.	Francois Mitterand, President, France	Non-acceptance embarrasses donor and U.S. Govt.
Nicholas Brady, Secretary	Bronze Sculpture. Rec'd—July 9, 1990. Est. value $675. Retained by Treasury for official use.	Brian Mulroney, Prime Minister, Canada	Non-acceptance embarrasses donor and U.S. Govt.
Nicholas Brady, Secretary	Venezuelan Carpet. Rec'd—December 7, 1990. Est. value $850. Pending approval for official Treasury use.	Carlos Andres, President, Venezuela	Non-acceptance embarrasses donor and U.S. Govt.
David Mulford, Under Secretary, International Affairs.	Venezuelan Carpet. Rec'd—December 7, 1990. Est. value $850. Pending approval for official Treasury use.	Carlos Andres, President, Venezuela	Non-acceptance embarrasses donor and U.S. Govt.
David Mulford, Under Secretary, International Affairs.	Jaccord Clock. Rec'd—April 12, 1990. Est. value $400. Retained by Treasury for official use.	Jacques Attalli, Special Advisor to President Mitterand.	Non-acceptance embarrasses donor and U.S. Govt.
Samuel J. Snyder, Program Analyst, Office of International.	Gent's eighteen (18) karat yellow gold and stainless Omega Constellation day-date watch with leather strap. Rec'd—June 24, 1989. Est. value—$695. Purchased by recipient watch sold for $665. Reported to GSA May 5, 1990.	Sheikh Hamad-Rashid, Director, Saudi Customs, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Samuel J. Snyder, Program Analyst, Office of International.	Ladies eighteen (18) karat yellow gold and stainless Omega Constellation watch leather strap. Est. value—$695. Rec'd—June 24, 1989. Reported to GSA May 5, 1990. Pending transfer to GSA.	Sheikh Hamad Al-Rashudi, Director, Saudi Customs, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

[FR Doc. 91–14903 Filed 6–24–91; 8:45 am]
BILLING CODE 4710–20–M

Federal Register

Tuesday
June 25 1991

Part IV

Department of State

Office of International Conferences

Participation of Private-Sector Representatives on U.S. Delegations; Notice

DEPARTMENT OF STATE

Office of International Conferences

[Public Notice 1417]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its April 1990 through May 30, 1991 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by article III(c)(5) of the guidelines published in the **Federal Register** on March 23, 1979.

Dated: June 6, 1991.

Frank R. Provyn,

Director, Office of International Conferences.

United States Delegation to the Meeting of the Executive Board of the United Nations Children's Fund (UNICEF), New York, April 16–27, 1990

Representative

Peter B. Teeley, United States Representative to UNICEF, Washington, DC

Alternate Representative

The Honorable Jonathan Moore, United States Alternate Representative on the Economic and Social Council of the United Nations, New York

Advisers

Mary Louise Becker, Office of Donor Coordination, Bureau for Program and Policy Coordination, Agency for International Development
Lawrence M. Grossman, United States Mission to the United Nations, New York
Nicholas Hill, United States Mission to the United Nations, New York
Teresa Hobgood, Office of United Nations System Budgets, Bureau of International Organization Affairs, Department of State
A. Gordon MacArthur, United States Mission to the United Nations, New York
Audrey P. Manley, Deputy Assistant Secretary for Health, Department of Health and Human Services
David C. McGaffey, Deputy Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Sylvia Stanfield, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Linda Vogel, Deputy Director, Office of International Health, Public Health Service, Department of Health and Human Services

Private Sector Advisers

Lawrence E. Bruce, Jr., United States Committee for UNICEF, New York
Mary Ann Stewart, (Mrs. Potter Stewart), Washington, DC

United States Delegation to the United Nations General Assembly Special Session Devoted To International Economic Cooperation, New York, April 23–28, 1990

Representative

The Honorable Thomas R. Pickering, Ambassador Extraordinary and Plenipotentiary, United States Permanent Representative to the United Nations, New York

Alternate Representatives

The Honorable Jonathan Moore, United States Alternate Representative on the Economic and Social Council of the United Nations, New York
The Honorable Alexander F. Watson, Ambassador Extraordinary and Plenipotentiary, United States Deputy Permanent Representative to the United Nations, New York

Senior Adviser

The Honorable Edward Marks, Minister-Counselor, Deputy Representative on the Economic and Social Council of the United Nations, New York

Advisers

Frank Buchholz, Deputy Director, Office of International Economic Policy, Bureau of International Organization Affairs, Department of State
Steven Donovan, Office of International Debt Policy, Department of the Treasury
Hugh T. Dugan, United States Mission to the United Nations, New York
Paul Tveit, United States Mission to the United Nations, New York

Private Sector Advisers

Pearl Bailey, Lake Havasu City, Arizona
Barbara Franklin, Washington, DC
Gary MacDougal, New York, New York

United States Delegation to the World Intellectual Property Organization (WIPO), Committee of Experts on Model Provisions for Legislation in the Field of Copyright, Third Session, Geneva, Switzerland, July 2–13, 1990

Representative

Ralph Oman, Register of Copyrights, Copyright Office, Library of Congress

Alternate Representative

Dorothy Schrader, General Counsel, Copyright Office, Library of Congress

Advisers

Lewis Flacks, Policy Planning Adviser, Copyright Office, Library of Congress
Richard Owens, Senior Attorney, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce
Emery Simon, Director for Intellectual Property, Office of the United States Trade Representative, Executive Office of the President

Private Sector Advisers

Jon Baumgarten, Attorney, Proskauer, Rose, Goetz, and Mendelsohn, Washington, DC
Morton David Goldberg, Schwab, Goldbert, Price, and Dannay, New York, New York
Eric H. Smith, General Counsel, International Intellectual Property Alliance, Washington, DC

United States Delegation to The United Nations Commission on International Trade Law (UNCITRAL), Working Group on International Payments, 21st Session, New York, New York, July 9–20, 1990

Representative

Harold S. Burman, Private International Law, Office of the Legal Adviser, Department of State

Alternate Representatives

Thomas Baxter, Associate General Counsel, Federal Reserve Bank of New York, New York, New York
Carl Felsenfeld, Professor of Law, Lincoln Center, Fordham University, New York, New York
Ernest Patrikis, Federal Reserve Bank of New York, New York, New York

Private Sector Adviser

Samuel Newman, Manufacturers Hanover Trust, New York, New York

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XV (Transmission Systems and Equipment) and its Working Parties, Geneva, Switzerland, July 16–27, 1990

Representative

Gary M. Fereno, Senior Telecommunications Policy Specialist, Office of Standards and International Organizations, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Gary M. Rekstad, National Communications System

Private Sector Advisers

J. Martin Carroll, Manager, Standards, Bell Atlantic, Inc., Arlington, Virginia
James A. Dahl, U.S. West Advanced Technologies, Englewood, Colorado
Francis C. Horn, Bellcore, Red Bank, New Jersey
William T. Kane, Manager, Standards, Corning Incorporated, Corning, New York
Viet Q. Le, MCI, Inc., Reston, Virginia
Michael Onufry, Jr., Associate Division Director, COMSAT Corporation, Clarksburg, Maryland
Richard Schaphorst, President, Delta Information Systems, Horsham, Pennsylvania
Anthony Schiano, AT&T Bedminster, New Jersey
John R. Sergo, Jr., Northern Telecom, Inc., Norcross, Georgia

United States Delegation to the Chemical Committee's First Ad Hoc Meeting on Recycling of Plastics, August 28–29, 1990; and the Second Session of the Study on Rational Use of Water, August 30–31, 1990, of the Economic and Social Council (ECE), Geneva

Representative

Vincent J. Kamenicky, Director, Office of Chemicals, Department of Commerce

Adviser

Appropriate Officer, U.S. Mission, Geneva

Private Sector Adviser

Ronald N. Liesemer, Vice President for Technology, The Council for Solid Waste Solutions, Society of the Plastics Industry, Washington, DC

United States Delegation to the 36th Session of the Subcommittee on Safety of Navigation (NAV), International Maritime Organization (IMO), London, England, September 3–7, 1990

Representative

Captain Leo J. Black, Chief, Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Alternate

Edward J. LaRue, Jr., Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Advisers

Commander Thomas J. Meyers, Assistant Chief, Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Christopher M. Young, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

James E. Ayres, Scientific Advisor for Hydrography, Defense Mapping Agency

Private Sector Adviser

Mortimer Rogoff, President, Digital Directions Corporation, Washington, DC

Committee on Fisheries (COFI), Third Session of the Sub-Committee on Fish Trade of the Food and Agriculture Organization (FAO), Rome, September 4–7, 1990

Representative

Larry L. Snead, Director, Office of Fisheries Affairs, Department of State

Advisers

Steven D. Hill, United States Mission to the United Nations, Agencies for Food and Agriculture, Rome

Bruce Morehead, Chief, Utilization and Research Division, National Marine Fisheries Service, Department of Commerce

United States Delegation to the International Communication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group VIII Telematic Terminals, Geneva, Switzerland, September 5–14, 1990

Representative

Charles D. Bodson, Deputy Director, National Communications Systems

Alternate

Douglas V. Davis, Attorney-Adviser, Federal Communications Commission

Adviser

Stephen Perschau, Standards Engineer, National Communications System

Private Sector Advisers

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Eugene Gavenman, RICOH Corporation, San Jose, California

Ralph Grant, Senior Engineer, 3M Company, St. Paul, Minnesota

Henry Marchese, AT&T, Bedminster, New Jersey

Herman Silbiger, Consultant, APPLICOM, Tinton Falls, New Jersey

Cornelius J. Starkey, Vice President, Data Beam Corporation, Lexington, Kentucky

Kamlesh Tewani, Senior Engineer, AT&T Bell Laboratory, Holondel, New Jersey

Charles Touchton, Standards Supervisor, IBM Corporation, Tampa, Florida

Stephen Urban, Senior Engineer, Delta Information Systems, Inc., Horshom, Pennsylvania

United States Delegation to the Commodities: International Rubber Study Group (IRSG), Ottawa, Canada, September 6–14, 1990

Representative:

Frederic W. Siesseger, Director, International Commodities Division, Department of Commerce

Alternate Representative:

David Moran, American Embassy, Ottawa

Private Sector Advisors:

Robert L. Armbruster, Manager, Polymer Rubber Purchasing, Uniroyal-Goodrich Tire Co., Akron, Ohio

Peter Bierrie, President, Andrew Weir Commodities, Inc., New York, NY

Patrecia A. Bovino, Cargil, Inc., Staten Island, New York

Thomas E. Cole, President, Rubber Manufacturers Association, Washington, DC

Warren Heilbron, President, Alan L. Grant Rubber Division, Imperial Commodities Corporation, New York, NY

Robert J. Klein, Director of Purchasing, Bridgestone/Firestone, Inc., Akron, Ohio

Frank Raniolo, President, Alcan Rubber and Chemical, New York, NY

James Walsh, Director, Purchasing Natural Rubber, Goodyear Tire and Rubber Co., Akron, Ohio

Thomas Will, Manager, Management Information, Goodyear Tire and Rubber, Akron, Ohio

Ival Stewart Wilson, Authorized Representative, Cargil Inc., New York, NY

United States Delegation to the International Rubber Study Group (IRSG), Ottawa, September 6–14, 1990

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United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Ad Hoc Group Under Resolution 18, Geneva, Switzerland, September 10–14, 1990

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Standards and International Organizations, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Gary M. Fereno, Deputy Director, Telecommunications and Information Standards, Standards and International Organizations, Bureau of International Communications and Information Policy, Department of State

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Douglass V. Davis, Senior Attorney-Adviser, International Conference Staff, Common Carrier Bureau, Federal Communications Commission

Vernon McConnell, Frequency Manager, United States Military Communications, Electronics Board, Department of Defense

Private Sector Advisers

Gary Fishman, District Manager, American Telephone and Telegraph, Bedminster, New Jersey
Richard Holleman, Director, Standards Practices, IBM Corporation, Purchase, New Jersey
Ivor N. Knight, Director, International Standards, COMSAT Corporation, Washington, DC
Robert J. Smith, Associate Director, NYNEX Corporation, White Plains, New York
Carmine Taglialatela, Jr., Head, International Standards, MCI Telecommunications Corporation, McLean, Virginia

United States Delegation to the Organization of American States, Inter-American Telecommunication Conference(OAS/CITEL), Permanent Technical Committee (PTC)—Broadcasting and Permanent Technical Committee (PTC)—Radiocommunications, Ottawa, Canada, September 10–14, 1990

Representative

Warren G. Richards, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Advisers

John Gilsenan, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State
Cecily C. Holiday, Common Carrier Bureau, Federal Communications Commission
Lawrence M. Palmer, Radio Conference Preparations, National Telecommunication and Information Administration, Department of Commerce
Steven Selywyn, Mass Media Bureau, Federal Communications Commission
Henry A. Straube, Mass Media Bureau, Federal Communications Commission
Thomas Walsh, Voice of America, United States Information Agency
David P. Wye, Office of Technology Assessment, Congress of the United States

Private Sector Adviser

Leslie A. Taylor, Leslie Taylor Associates, Bethesda, Maryland

United States Delegation to the Committee on Housing, Building, and Planning, 51st Session, Economic Commission for Europe (ECE)/(UN), Geneva, September 11–14, 1990

Representative

Anna S. Kondratas, Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development

Alternate Representative

David Patterson, U.S. Mission, Geneva

Adviser

Henry Crumpton, U.S. Mission, Geneva

Private Sector Advisers

Kate Griffin, Director of Planning and Development, City Government, Chicopee, Massachusetts
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George Chranewycz, Acting Director of Redevelopment, City Housing Authority, Newark, New Jersey

United States Delegation to the 63rd Session of the Legal Committee, International Maritime Organization (IMO) London, England, September 17–21, 1990

Representative

Jonathan Collom, Captain, Chief, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Alternate Representative

Frederick M. Rosa, Jr., Lieutenant Commander, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

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Ann Giesecke, Environmental Protection Specialist, Office of Water, Environmental Protection Agency
Michael D. Morrissette, Chief, Hazard Evaluation Section, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Mark J. Yost, Lieutenant, Attorney, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Private Sector Advisers

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Neil D. Hobson, Chairman, Maritime Law Association Committee on Transportation of Hazardous Substances, Milling, Benson, Woodward, Hillyer, Pierson and Miller, New Orleans, Louisiana
Michael P. Walls, Assistant General Counsel, Chemical Manufacturers Association, Washington, DC

United States Delegation to the 34th Session of the General Conference of the International Atomic Energy Agency (IAEA), Vienna, September 17–21, 1990

Representative

The Honorable Richard T. Kennedy, Ambassador, United States Representative to the IAEA

Alternate Representatives:

Kenneth M. Carr, Chairman, Nuclear Regulatory Commission
The Honorable Michael H. Newlin, Ambassador, Deputy United States Representative to the IAEA

Senior Advisers:

Arlen Erdahl, Principal Deputy, Assistant Secretary for International Affairs, Department of Energy
The Honorable Henson Moore, Deputy Secretary, Department of Energy

Advisers:

Ronald Bartell, Science Advisor, U.S. Mission, Vienna
Susan Burk, International Nuclear Affairs, Nuclear Weapons Control Bureau, Arms Control and Disarmament Agency
Stephen Burns, Assistant to the Chairman, U.S. Nuclear Regulatory Commission
Salvador Ceja, Acting Director, Nuclear Non-Proliferation Policy, Office of International Affairs, Department of Energy
Linda Gallini, Executive Assistant to the Ambassador-at-Large, Department of State
Newell Highsmith, Office of the Legal Adviser, Department of State
Maurince Katz, Counselor, U.S. Mission, Vienna
Francis Kinnelly, Director, Office of Nuclear Technology & Safeguards, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Fred McGoldrick, Counselor, U.S. Mission, Vienna
John McGuinness, Director, Office of Science and Technology, Bureau of International Organization Affairs, Department of State
Geraldine Schuetze, Personal Assistant to the Chairman, Nuclear Regulatory Commission
James Shea, Director of International Programs, Office of Governmental and Public Affairs, Nuclear Regulatory Commission
Carl Stoiber, Director, Office of Non-Proliferation and Export Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Jay Stone, Executive Assistant to the Deputy Secretary, Department of Energy
Richard Stratford, Deputy Assistant Secretary for Nuclear Energy and Energy Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Adviser:

L. Manning Muntzing, Doub, Muntzing and Glasgow, Washington, DC

United Stated Delegation to the Executive Board and Council Sessions of the International Coffee Organization (ICO), London, September 17–28, 1990

Representative

Myles Frechette, Assistant United States Trade Representative for Latin America, the Caribbean, Africa and Commodity Policy, Executive Office of the President

Alternate Representative

Ralph F. Ives, Director for Caribbean Basin and North/South Affairs, Office of the United States Trade Representative

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Caterina Littleton, International Economist, Department of Commerce
William Wiengarten, Director, Office of Food Policy, Department of State

Robert Winsor, Resources Officer, U.S. Embassy, London

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David A. Brown, General Foods Corporation, New York, New York 10577
John T. Hays, Founder/Director, Coffees of Hawaii, Inc., Honolulu, Hawaii
Grady Tiller, Procter and Gamble Company, Houston, Texas

United States Delegation to the Working Party on Facilitation of International Trade Procedures, 32nd Session, Economic Commission for Europe (ECE)/(UN), Geneva, September 18–20, 1990

Representative

Bruce Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Department of Transportation

Alternate Representative

Clifford Woodward, Office of International Transportation and Trade, Department of Transportation

Advisers

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Alice Rigdon, Customs Attache, United States Mission to the European Communities, Brussels

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Daniel L. Daly, Mobile Oil Corporation, Alexandria, Virginia
Eugene A. Hemley, Executive Director, National Council on International Trade Documentation, New York, New York
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Jennifer Lori Kandel, Vice President, ACS Network Systems, Concord, California
Jeffrey B. Ritter, Schwartz, Kelm, Warren & Rubenstein, Columbus, Ohio
Harriet Rusk, President, Data Interchange Standards Association, Alexandria, Virginia
Jeffrey Sturrock, Director, EDI Systems; Texas, Instruments, Inc., Plano, Texas
Nicole Willenz, Price Waterhouse, Chicago, Illinois

United States Delegation to the 49th Plenary Meeting of the International Cotton Advisory Committee (ICAC) Montpellier, September 24–28, 1990

Representative

Harry C. Bryan, Director, Tobacco, Cotton, and Seeds Division, Foreign Agricultural Service, Department of Agriculture

Alternate Representative

Geron E. Rathell, Marketing Specialist, Tobacco, Cotton, and Seeds Division, Foreign Agricultural Service, Department of Agriculture

Advisers

Russell Barlowe, Fibers Analyst, World Agricultural Outlook Board, Department of Agriculture
Charles V. Cunningham, Deputy Director, Analysis Division, Agricultural Stabilization and Cooperative Service, Department of Agriculture

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Phillip C. Burnett, Executive Vice President, National Cotton Council, Memphis, TN
J. Walker Clarke, President, American Cotton Shippers Association, Columbia, SC
Donald B. Conlin, Past Chairman, New York Cotton Exchange, New York, NY
Neil P. Gillen, Executive Vice President, American Cotton Shippers Association, Washington, DC
J. Nicholas Hahn, President, Cotton Inc. of Americas, New York, NY
Bruce Heiden, Chairman, National Cotton Council, Washington, DC
K. Adrian Hunnings, Director of Foreign Operations, Cotton Council International, Washington, DC
William E. May, Administrative Vice President, American Cotton Shippers Association, Memphis, TN

United States Delegation to the CSCE Meeting on the Mediterranean, Palma De Mallorca, Spain, September 24–October 19, 1990

Representative

John R. Davis, Ambassador, Diplomat-in-Residence, Yale University

Alternate Representative

David Evans, Senior Advisor, Commission on Security and Cooperation in Europe

Congressional Staff Advisers

Samuel G. Wise, Staff Director, Commission on Security and Cooperation in Europe
Jane S. Fisher, Deputy Staff Director, Commission on Security and Cooperation in Europe
Mary Sue Hafner, Staff Member, Commission on Security and Cooperation in Europe
Jeanne McNaughton, Staff Member, Commission on Security and Cooperation in Europe
Spencer Oliver, Consultant, Commission on Security and Cooperation in Europe

Advisers

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Magdalena Evi Huffer, Office of European Security and Political, Bureau of European and Canadian Affairs, Department of State
Mark N. Joyce, Special Assistant to the Deputy Assistant Administrator for Air and Radiation, Office of Air and Radiation, Environmental Protection Agency
Tom Laughlin, Chief, International Liaison Staff, National Oceanic and Atmospheric Administration, Department of Commerce
Joan Wadelton, CSCE Desk Officer, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs

Private Sector Advisers

Thomas L. Freestone, Maricopa County Board of Supervisors, Phoenix, Arizona
Peter M. Haas, Assistant Professor, University of Massachusetts, Amherst, Massachusetts
Kenneth R. Small, DSL Capital Corporation, Washington, DC

United States Delegation to the Economic Commission for Europe (ECE), Coal Committee, 86th Session, Geneva, September 25–29, 1990

Representative

George Ziegler, Office of International Affairs, Department of Energy

Alternate Representative

Ralph Anske, Office of Energy Consuming Country Affairs, Bureau of Economic and Business Affairs, Department of State

Adviser

Miles Greenbaum, Office of Fossil Energy, Department of Energy

Private Sector Adviser

Susan Wingfield, President, Mississippi Valley Coal, New Orleans, Louisiana

United States Delegation to theTwentieth Session of the Subcommittee on Bulk Chemicals, International Maritime Organization (IMO), London, October 1–5, 1990

Representative

Gordon D. Marsh, Commander; Chief, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Emmanuel P. Pfersich, Chief, Packaged Cargo Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Michael D. Morrissette, Chief, Hazard Evaluation Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Michael Parnarouskis, Chief, Bulk Cargo Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Robert H. Fitch, Lieutenant Commander, Bulk Cargo Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Adviser

Dennis M. Arnett, Chevron Shipping Company, San Francisco, California

United States Delegation to the 35th Session of the International Lead and Zinc Study Group (ILZSG), Geneva, October 11–18, 1990

Representative

Caterina Petrucco-Littleton, International Economist, Department of Commerce

Alternate Representative

Eldwine De Santis, International Economist, Bureau of Economic and Business Affairs, Department of State

Private Sector Advisers

Richard Bauer, Jr., Vice President, Eastern Alloys, Maybrook, NY
Salvatore Ciccolella, Vice President, Commercial, Big River Zinc, Clayton, MO
Charles Dunne, Ore Buyer, ASARCO, Inc., New York, NY
Robert Flake, President, Metals Operations, Dresser Industries, Houston, TX
Stanley Neomonitis, Clarendon Ltd., Stamford, CT
Malcolm Nordstrom, Manager, Smelter Sales, RSR Corporation, Dallas, TX
Steve Pohlman, Director of Sales, Kennecott, Salt Lake City, Utah
John Rense, Red Dog Mine, NANA Regional Corp., Anchorage, Alaska
Larry Stoehr, Sales Manager, Raw Material, St. Louis, MO

United States Delegation to the Steel Committee and Working Party of the Steel Committee, Organization for Economic Cooperation and Development (OECD), Paris, October 17–19, 1990

Representative

Robert Cassidy, Deputy Assistant United States Trade for Industry, Office of the United States Trade Representative, Executive Office of the President

Alternate Representative to the Steel Committee and Representative to Working Party

Robert Reilly, Director, Office of Metal, Minerals and Commodities, Department of Commerce

Advisers

Holly Kuga, Director, Office of Agreements Compliance, Department of Commerce
Carole Jackson, Office of Special Trade Activities, Bureau of Economic and Business Affairs, Department of State
Jane Richards, Office of International Economic Affairs, Department of Labor
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Frank Fenton, Vice President, International Trade, American Iron & Steel Institute, Washington, DC
Jack Sheehan, Director of Legislative Affairs, United Steel Workers of America, Washington, DC

United States Delegation to the Ninth Annual Meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Scientific Committee, Hobart, October 22–November 3, 1990

Representative

Raymond Arnaudo, Chief, Division of Polar Affairs, Office of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Kevin Chu, Office of Oceans and International Environmental and Scientific Affairs, Department of State
Rennie Holt, Southwest Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Polly Penhale, Program Manager, Polar Biology Program, Division of Polar Programs, National Science Foundation
Robin Tuttle, Office of International Affairs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Beth Marks, Sierra Club, New Haven, CT

United States Delegation to the 13th Regular Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), Madrid, October 29–November 16, 1990

Commissioners

The Honorable Carmen J. Blondin (Head of Delegation), U.S. Commissioner, Deputy Assistant Secretary for International Affairs, National Oceanic & Atmospheric Administration, Department of Commerce
The Honorable Michael B. Montgomery, San Marino, California
The Honorable Leon J. Weddig, Executive Vice President, National Fisheries Institute, Arlington, Virginia

Member of Congress

The Honorable Gerry E. Studds, U.S. House of Representatives

Congressional Staff Advisers

Penelope Dalton, Committee on Commerce, Science and Transportation, United States Senate
James McCallum, Committee on Merchant Marine and Fisheries, United States House of Representatives
Rodney Moore, Committee on Merchant Marine and Fisheries, United States House of Representatives
John Moran, Committee on Commerce, Science and Transportation, United States Senate
Jeffery R. Pike, Committee on Merchant Marine and Fisheries, United States House of Representatives

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Mariam McCall, National Marine Fisheries Service, National Oceanic & Atmospheric Administration, Department of Commerce
Rebecca Rootes, National Marine Fisheries Service, National Oceanic & Atmospheric Administration, Department of Commerce
Katherine Rodriguez, Northeast Region, National Marine Fisheries Service, National Oceanic & Atmospheric Administration, Department of Commerce
Richard Stone, National Marine Fisheries Service, National Oceanic & Atmospheric Administration, Department of Commerce

Private Sector Adviser

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United States Delegation to the Meeting on the Rules of Procedure for the United Nations Liner Code Review Conference and the Group B Coordinating Meeting, United Nations Conference on Trade and Development (UNCTAD), Geneva, October 30–November 1, 1990

Representative

Stephen M. Miller, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Greg Hall, Office of International Affairs, Maritime Administration, Department of Transportation

Adviser

Appropriate USOECD, Mission Officer, Geneva

Private Sector Adviser

Donald O'Hare, Director, Public Affairs, Sea-Land Corporation, Washington DC

United States Delegation to the Sixteenth Assembly of Parties of the International Telecommunication Satellite Organization (INTELSAT), Lisbon, Portugal, October 30–November 2, 1990

Representative

The Honorable Bradley P. Holmes, United States Coordinator and Director, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Richard C. Beaird, Deputy United States Coordinator and Director, Bureau of International Communications and Information Policy, Department of State

Advisers

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James D. Earl, Attorney-Advisor, Office of the Legal Advisor, Department of State
Randolph C. Earnest, Director for Satellite and Cable Policy, Bureau of International Communications and Information Policy, Department of State

Richard Lebaron, Telecommunications Attache, United States Embassy, Lisbon
Steven W. Lett, Deputy Director for Satellite and Cable Policy, Bureau of International Communications and Information Policy, Department of State
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Maury J. Mechanick, Vice President, INTELSAT Policy and Representation, World Systems Division, Communications Satellite Corporation
Timothy S. Shea, Manager, INTELSAT Representation, World Systems Division, Communications Satellite Corporation

United States Delegation to the Study Group I (Services) Meeting of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, Switzerland, October 30–November 9, 1990

Representative

Douglas V. Davis, Attorney Advisor, Common Carrier Bureau, Federal Communications Commission

Advisers

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Granger Kelly, Electrical Engineer, Interoperability and Standards Office, Defense Communication Agency

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United States Delegation to the Plan Committee for Asia and Oceania of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Bangkok, Thailand, October 31–November 7, 1990

Representative

David Clark Norton, Office of Standards and International Organizations, Bureau of International Communications and Information Policy, Department of State

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David Wong, Sprint International Communications, Hong Kong

United States Delegation to the First Meeting of the Technical Group of the Spaw Protocol Under the Cartagena Convention, November 5–8, 1990, Martinique

Representative

Kevin Chu, Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Melinda Chandler, Office of the Legal Adviser, Department of State
Sharon Cleary, Office of International Affairs, National Park Service, Department of Interior
David Gayer, Office of Solicitor, Department of Interior
Ralph Lopez, National Oceanic and Atmospheric Administration, Department of Commerce
Bruce McBride, Office of Scientific Authority, Fish and Wildlife Service, Department of Interior
Arthur Paterson, Office of International Cooperation, National Oceanic and Atmospheric Administration, Department of Commerce
Herbert Raffaele, Fish and Wildlife Service, Department of Interior
Henry Short, Office of Scientific Authority, Fish and Wildlife Service, Department of Interior
Philip Williams, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Mark Willis, Office of Ecology, Health and Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

LaVerne Ragster, Professor of Marine Biology, University of the Virgin Islands
Dilberto Cintron-Molero, Special Assistant to the Secretary of Natural Resource, Commonwealth of Puerto Rico

United States Delegation to the Chemicals Group and Management Committee, 15th Joint Meeting, Organization for Economic Cooperation and Development (OECD), Paris, November 6–8, 1990

Representative

Linda Fisher, Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency

Alternate Representative

Breck Milroy, Office of Environmental Protection, Bureau of Oceans and International Environment and Scientific Affairs, Department of State

Advisers

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David Ogden, Office of International Activities, Environmental Protection Agency
Appropriate USOECD, Mission Officer, Paris

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Kenneth Murray, Exxon Chemicals, Linden, New Jersey
Polly Hoppin, Conservation Foundation

United States Delegation to the International Natural Rubber Organization Council and Committees on Buffer Stock Operations, Statistics, and Other Measures, Kuala Lumpur, Malaysia, November 6–14, 1990

INRO Council and Committees on Buffer Stock Operations, Statistics, and Other Measures

Representative

Frederic W. Siesseger, Director, Primary Commodities Division, Department of Commerce

Alternate

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Adviser

David Miller, Economic Officer, American Embassy, Kuala Lumpur

Committee on Administration

Representative

Patricia Nelson-Douvelis, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate

David Miller, Economic Officer, American Embassy, Kuala Lumpur

Industry Advisers

Harold Ross Miller, Managing Director, Goodrich Company Private Ltd., Singapore
Stanley Malcom Schultz, Purchasing Director, The Firestone Tire and Rubber Company, Akron, Ohio
Peter W.C. Tan, Managing Director, Goodyear Orient Private Ltd., Singapore

United States Delegation to the 30th Session of the Marine Environment Protection Committee (MEPC), International Maritime Organization (IMO), London, November 12–16, 1990

Representative

Joel D. Sipes, Rear Admiral, United States Coast Guard, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representatives

Joseph J. Angelo, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation
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Advisers

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Environment and Scientific Affairs, Department of State
William St. J. Chubb, Commander, United States Coast Guard, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation
Timothy R. Keeney, Director of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce
John Lishman, Office of Marine and Estuarine Protection, Environmental Protection Agency (EPA)
James M. MacDonald, Captain, United States Coast Guard, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation
Gordon D. Marsh, Commander, United States Coast Guard, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation
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Sally Ann Lentz, Staff Attorney, Oceanic Society, Washington, DC
Garry Mauro, Commissioner, State of Texas General Land Office
Robert A. Ternus, Vice President & General Manager of Engineering, Chevron Shipping Co., San Anselmo, California
Roger L. Zoch, Nelson Industries, McFarlane, Wisconsin

United States Delegation to the Third Meeting of Study Group VII (Data Networks) of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, Switzerland, November 12–23, 1990

Representative

Gary M. Fereno, Senior Telecommunications Policy Specialist, Bureau of International Communications and Information Policy, Department of State

Advisers

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Neil Seitz, Deputy Director, Systems and Network Development, National Telecommunications and Information Administration, Department of Commerce
Dale L. Walters, Computer Scientist, National Institute of Standards and Technology, Department of Commerce

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United States Delegation to the Meeting of Study Group III (Tariff and Accounting Principles) of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, Switzerland, November 13–21, 1990

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United States Delegation to the International Tropical Timber Organization, 9th Session, Yokohama, Japan, November 16–23, 1990

Representative

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Lee Jimerson, Representative of International Hardwood Products Association, Contact Lumber Co., Portland, Ore.

United States Delegation to the Group of Experts on the Transport of Perishable Foodstuffs, 45th Session, Economic Commission for Europe (ECE), Geneva, November 19–22, 1990

Representative

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David Patterson, United States Mission, Geneva

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Richard Cerwonka, Director of Equipment & Engineering and Maintenance, Sea-Land Service Inc., Elizabeth, New Jersey

United States Delegation to the International Conference on Cooperation on Oil Pollution Predaredness and Response (OPPR), International Maritime Organization (IMO), London, November 19–30, 1990

Representative

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David Kennedy, Hazardous Materials Response Branch, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce
Gary Larsen, Shipping Attache, United States Embassy, London
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United States Delegation to the Study Group XVIII and its Working Parties Meeting of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Matsuyama, Japan, November 26–December 7, 1990

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Melvin Woinsky Manager, Technology Planning, Northern Telecom Incorporated, Morristown, New Jersey

United States Delegation to the Working Group on Statistics, 15th Session, November 19, 1990; Joint Working Group on Insurance Services, November 20–21, 1990; and Insurance Committee, 46th Session, November 22–23, 1990; Organization for Economic Cooperation and Development (OECD), Paris, France

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David Walsh, Director, Department of Insurance, State of Alaska, Juneau, Alaska

United States Delegation to the 22nd Session of the Working Group on International Payments of the United Nations Commission on International Trade Law (UNCITRAL), Vienna, Austria, November 27–December 7, 1990

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United States Delegation to the African Regional Telecommunications Development Conference of the International Telecommunications Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Harare, Zimbabwe, December 6–11, 1990

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Alan Parker, President, Orbital Communication Corporation, Fairfax, Virginia
Noah Samara, President, Afrispace, Incorporated, Washington, DC

United States Delegation to the Committee on Tungsten, 22nd Session, United Nations Conference on Trade and Development (UNCTAD), Geneva, December 10–14, 1990

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Gerald Smith, Physical Scientist, Bureau of Mines, Department of the Interior

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United States Delegation to the 31st Session of the Subcommittee on Containers and Cargoes, International Maritime Organization (IMO), London, January 7–11, 1991

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S. Fraser Sammis, President, National Cargo Bureau, New York, NY

Susan Wingfield, President, Mississippi Valley Coal Exporters Council, New Orleans, Louisiana

United States Delegation to the Fourth Session of the Joint World Meteorological Organization (WMO) and UN Educational, Scientific and Cultural Organization (UNESCO), Intergovernmental Oceanographic Commission (IOC), Intergovernmental Board on the Tropical Ocean and Global Atmosphere (TOGA), Geneva, January 8–11, 1991

Representative

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United States Delegation to the Fourth Session of the Joint World Meteorological Organization (WMO) and UN Educational, Scientific and Cultural Organization (UNESCO), Intergovernmental Oceanographic Commission (IOC), Intergovernmental Board on the Tropical Ocean and Global Atmosphere (TOGA), Geneva, January 8–11, 1991

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United States Delegation to the First Meeting of the Automatic Dependent Surveillance Panel (ADSP), International Civil Aviation Organizations, Montreal, January 14–25, 1991

Representative

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Amado Colberg, International Procedures Specialist, Federal Aviation Administration, Department of Transportation

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United States Delegation to the Meeting on Peaceful Settlement of Disputes, Conference on Security and Cooperation in Europe (CSCE), Valletta, Malta, January 15–February 8, 1991

Head of Delegation

Michael K. Young, Deputy Legal Adviser, Office of the Legal Adviser, Department of State

Vice-Chairmen of Delegation

The Honorable Steny H. Hoyer, United States House of Representatives

The Honorable Sally J. Novetzke, Ambassador, United States Embassy, Valletta

Deputy Head of Delegation

John M. Evans, CSCE Coordinator, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State

Executive Secretary

Joan A. Wadelton, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State

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Erika Schlager, Staff Member, Commission on Security and Cooperation in Europe

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Charles Nicholas Rostow, Special Assistant to the President and Legal Adviser, National Security Council

Bruce C. Rashkow, Assistant Legal Adviser, United Nations Affairs, Department of State

Miriam Sapiro, European and Canadian Affairs, Office of the Legal Adviser, Department of State

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Professor Richard Bilder, University of Wisconsin, School of Law, Madison, Wisconsin

Professor Jack Greenberg, Dean, Columbia College, New York, New York

Professor Louis Sohn, University of Georgia School of Law, Athens, Georgia

United States Delegation to the Committee on Gas—37th Session, Economic Commission for Europe (ECE), Geneva, January 21–24, 1991

Representative

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Alternate Representative,

Ralph Anske, Office of Global Energy, Bureau of Economic and Business Affairs, Department of State

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Stewart B. Kean, President, Utility Propane, Elizabeth, New Jersey

United States Delegation to the 22nd Session of the Subcommittee on Standards of Training and Watchkeeping, International Maritime Organization (IMO), London, January 21 to 25, 1991

Representative

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United States Delegation to the Group of Rapporteurs on Pollution and Energy, 22nd Session, Economic Council of Europe (ECE), Geneva, January 23–25, 1991

Representative

Thomas Baines, Senior Project Director, Office of Mobile Sources, Environmental Protection Agency, Ann Arbor, Michigan

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United States Delegation to the Twenty-Seventh Meeting of the Pan American Institute of Geography and History (PAIGH) of the Organization of American States, Aquascalientes, Mexico, January 22–26, 1991

Representative

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Peter F. Bermel, Vice-Chairman, U.S. National Section of PAIGH, United States Geological Survey, Department of the Interior

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United States Delegation to the 35th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessel Safety, International Maritime Organization (IMO), London, February 4–8, 1991

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United States Delegation to the 22nd Session of the Subcommittee on Lifesaving, Search and Rescue (LSR), International Maritime Organization (IMO), London, February 18–22, 1991

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United States Delegation to the Meeting of Study Group III (Tariff and Accounting Principles) of the International Telegraph and Telephone Consultative Committee (CCITT), International Telecommunication Union (ITU), Geneva, Switzerland, March 4–15, 1991

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United States Delegation to the Diplomatic Conference for the Revision of the International Conference for the Protection of New Varieties of Plants, International Union for the Protection of New Varieties of Plants (UPOV), Geneva, March 4–19, 1991

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United States Delegation to the Diplomatic Conference for the Revision of the International Conference for the Protection of New Varieties of Plants, International Union for the Protection of New Varieties of Plants (UPOV), Geneva, March 4–19, 1991

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United States Delegation to the Meeting of Study Group II (Network Operations and ISDN), International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, March 12–22, 1991

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United States Delegation to the 64th Session of the Legal Committee, International Maritime Organization, March 18–22, 1991

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United States Delegation to the Meeting of Study Group III (Tariff and Accounting Principles) of the International Telegraph and Telephone Consultative Committee (CCITT), International Telecommunication Union (ITU), London, England, March 18–22, 1991

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United States Delegation to the Study Group VIII Telematic Terminal Equipment Meeting of the International Telegraph and Telephone Consultative Committee (CCITT), International Telecommunication Union (ITU), Geneva, Switzerland, March 18–27, 1991

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United States Delegation to the Conference on Food Standards Chemicals in Food and Food Trade; Food and Agricultural Organization (FAO) and World Health Organization (WHO), Rome, March 18–27, 1991

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Gerald Guest, Director, Center for Veterinary Medicine, Food and Drug Administration
Bruce Jager, Health Effects Division, Environmental Protection Agency
Edwin Johnson, Office of International Activities, Environmental Protection Agency
Anne Lindsay, Office of Pesticide Programs, Environmental Protection Agency
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Bruce G. Julin, E.I. Dupont Company, Wilmington, DE
Eddie Kimbrell, Consultant, Holland and Knight, Washington, DC
Rod Leonard, Community Nutrition Institute, Washington, DC
James Serafino, Director, Regulatory Affairs, Nestle Foods Corporation, Purchase, New York

United States Delegation to the Preparatory Meeting for the 16th Antarctic Treaty Consultative Meeting, April 15–19, 1991

Representative

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Jack Talmadge, Division of Polar Programs, National Science Foundation

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United States Delegation to the 2nd Meeting of the Future Air Navigation Special Committee, International Civil Aviation Organization (ICAO), Montreal, April 29–May 17, 1991

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United States Delegation to the 44th World Health Assembly, World Health Organization (WHO), Geneva, May 6–17, 1991

Delegates

The Honorable Louis W. Sullivan, M.D. (Chief Delegate), Secretary of Health and Human Services
James O. Mason, M.D. (Deputy Chief Delegate), Assistant Secretary for Health, Public Health Service, Department of Health and Human Services
Antonia C. Novello, M.D., Surgeon General, Public Health Service, Department of Health and Human Services

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The Honorable Morris Abram, United States Permanent Representative to the United Nations Office and the Other International Organizations at Geneva
Neil A. Boyer, Director, Health and Transportation Programs, Bureau of International Organization Affairs, Department of State
James Sarn, M.D., Chief, Health, Population and Nutrition, Agency for International Development Mission, Cairo

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Paula Feeney, United States Mission, Geneva
Dennis O. Johnsen, International Health and Science Attache, United States Mission, Geneva
Anne W. Patterson, Counsellor for Political Affairs, United States Mission, Geneva
Nancy Pielemeier—(attending May 6–10), Deputy Director, Office of Health, Bureau for Science and Technology, Agency for International Development
Philip Schambra, Ph.D.—(attending May 6–10), Director, Fogarty International Center, National Institutes of Health, Public Health Service, Department of Health and Human Services
Roxann Van Dusen—(attending May 13–17), Director, Office of Health, Bureau for Science and Technology, Agency for International Development
Dr. Karl Western—(attending May 13–17), National Institute of Allergy and Infectious Diseases, Department of Health and Human Services

Private Sector Advisers

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Charles Johnson, M.D., President, National Medical Association, Washington, DC
William Walsh, M.D., Director, Project Hope, Washington, DC

United States Delegation to the Special Group on International Organizations, 43rd Meeting of the Maritime Transport Committee, Organization for Economic Cooperation and Development (OECD), May 13–15, 1991

Representative

Joseph P. Richardson, Deputy Director, Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Tom Carter, United States Mission, Geneva

Private Sector Advisers

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Donald L. O'Hare, Director, Public Affairs, Sea-Land Service, Inc., Washington, DC
Peter D. Prowitt Director, Government Affairs, American President Lines, Ltd., Washington, DC

United States Delegation to the Working Group on Insurance Statistics, 16th Session, (May 13); the Joint Working Group of the Committee on Capital Movements and Invisible Transactions (CMIT), and the Insurance Committee on Insurance Services (May 14–15); and the Insurance Committee, 47th Session (May 16–17); Organization for Economic Cooperation and Development (OECD), Paris, May 13–17, 1991

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Adviser

Barbara Geiser, United States Mission to the Organization for Economic Cooperation and Development, Paris

Private Sector Advisers

Janet Belkin, Chairperson, International Committee, American Council of Life Insurance, Merrick, NY
Hans Miller, Hartford International Insurance Co. SA–NV, Brussels, Belgium
David Walsh, Director, Insurance Division, Department of Commerce

United States Delegation to the Ad Hoc Meeting on Bauxite, United Nations Conference on Trade and Development (UNCTAD), Geneva, MAY 13–17, 1991

Representative

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Alternate Representative

David Cammarota, Industry Specialist, Department of Commerce

Adviser

Appropriate USTR/Mission Officer, Geneva

Private Sector Adviser

David Harris, The Aluminum Association Washington, DC

United States Delegation to the International Natural Rubber Organization Council and Committees on Buffer Stock OperationsStatistics, and Other Measures, Kuala Lumpur, Malaysia, May 13–24, 1991

INRO Council and Committees on Buffer Stock Operations, Statistics, and Other Measures

Representative

Frederic W. Siesseger, Director, Primary Commodities Division, Department of Commerce

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Adviser

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Private Sector Advisers

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Peter W. C. Tan, Managing Director, Goodyear Orient Private Ltd., Singapore

Committee on Administration

Representative

Patricia Nelson-Douvelis, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Adviser

David Miller, United States Embassy, Kuala Lumpur

United States Delegation to the International Sugar Organization (ISO), Market Evaluation and Statistics Committee, May 14; Executive Committee, May 15; and the Council of the International Sugar Organization, May 16; London, May 14–16, 1991

Representative

William Weingarten, Director, Office of Food Policy, Bureau of Economic and Business Affairs, Department of State

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Adviser

William Kuhn, Office of Food Policy, Bureau of Economic and Business Affairs, Department of State

Private Sector Adviser

Robert M. Black III, Commodities Analyst, M&M/Mars, Mt. Olive, NJ

United States Delegation to the 43rd Annual Meeting of the International Whaling Commission, Reykjavik, May 22–31, 1991

Representative

John Knauss, United States Commissioner and Under Secretary of Commerce for Oceans and Atmosphere, Department of Commerce

Alternate Representative

Sylvia Earle, Deputy United States Commissioner and Chief Scientist, National Oceanic and Atmospheric Administration, Department of Commerce

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James Brennan, Deputy General Counsel, National Oceanic and Atmospheric Administration,Department of Commerce
Kevin Chu, Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Melinda Chandler, Office of Legal Affairs, Department of State
Anne Crichton, Office of the Solicitor, Department of the Interior
Becky Rootes, Office of International Affairs, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce
Michael Tillman, Deputy Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

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Nancy Azzam, Windstar Foundation, Golden Valley, Minnesota
Barbara Britten, American Cetacean Society, Arlington, Virginia
Nancy Daves, Animal Protection Institute of America, Washington DC
William E. Evans, Dean, Texas A&M University, Galveston, Texas
John Prescott, American Association of Zoological Parks and Aquariums, Boston, Massachusetts
Burton Rexford, Chairman, Alaska Eskimo Whaling Commission

United States Delegation to the Chemicals Group and Management Committee, 16th Joint Meeting, Organization for Economic Cooperation and Development (OECD), Paris, May 28–30, 1991

Representative

Linda J. Fisher, Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency

Alternate Representative

Breck Milroy, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Charles Auer, Existing Chemicals Assessment Division, Office of Toxic Substances, Environmental Protection Agency
Paul Campanella, Chemical Control Division, Environmental Protection Agency
David Ogden, Office of International Activities, Environmental Protection Agency
Appropriate USOECD Mission Officer, Paris

Private Sector Advisers

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Tuesday
June 25, 1991

Part V

Department of Health and Human Services

Family Support Administration

45 CFR Parts 255 and 257

Aid to Families with Dependent Children At-Risk Child Care Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 255 and 257

RIN 0970-AA90

Aid to Families with Dependent Children At-Risk Child Care Program

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 5081 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Public Law 101-508, which adds section 402(i) to the Social Security Act (the Act) to create a child care program for low-income, working families, who are not receiving Aid to Families with Dependent Children (AFDC).

This optional program permits States to provide child care to low-income families who are not receiving AFDC, need child care in order to work, and would otherwise be at risk of becoming eligible for AFDC.

This proposed rule also amends § 255.4(c)(2) to clarify that for the purpose of child care provided under section 402(g) of the Act applicable standards of State and local law are standards that are generally applicable to care of a particular type in the State or local jurisdiction regardless of the source of payment for the care.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than 60 days from date of publication in the **Federal Register.**

ADDRESSES: Comments should be submitted in writing (facsimile transmissions will not be accepted) to the Assistant Secretary for Children and Families, Attention: Mary Ann Higgins, OFA/JTF, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Administration For Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mary Ann Higgins, Administration For Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9294.

SUPPLEMENTARY INFORMATION:

Background

As a result of the growing needs of children and families, on April 15, 1991 the Secretary of Health and Human Services Louis W. Sullivan, M.D., announced the merger of three operating divisions within the Department of Health and Human Services. The merger combines the programs and resources of the Family Support Administration, the Office of Human Development Services and the Maternal and Child Health Block Grant. The consolidation of these agencies formed the Administration for Children and Families (ACF). Under the direction of Assistant Secretary Jo Anne B. Barnhart, ACF will become a single agency to effectively coordinate programs for children and families. ACF will also provide the States, communities and the Congress a single agency, at the federal level, to contact for concerns or issues pertaining to welfare of children and families.

The child care needs of low-income families are addressed by a number of programs administered by the Administration For Children and Families (ACF). In the past three years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

Child care needs were first addressed for working families who receive AFDC benefits. A portion of the child care expenses was deducted from the family's earnings when calculating the amount of the family's AFDC grant. Later, the Family Support Act of 1988 guaranteed necessary child care for working AFDC recipients and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). In addition to recognizing the need for child care during training activities to obtain employment, the Family Support Act of 1988 addressed the need for child care during a 12-month transition period following the end of eligibility for AFDC. These child care measures were primarily designed for families already welfare dependent.

In OBRA 90, Congress established two new child care programs: Child care for low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC (the At-Risk Child Care program) and the Child Care and Development Block Grant program. Congress also amended the Earned Income Credit to assist the working poor in caring for their children.

At-Risk Child Care

In enacting the At-Risk Child Care program, Congress recognized that providing child care to low-income working families could enable such families to avoid welfare dependency. A State could also use the At-Risk Child Care program if it decides that the transition to economic independence and self-sufficiency for former AFDC families takes longer than provided for under the Transitional Child Care provisions in the Family Support Act. The State could also use the program for some categories of needy families who are not eligible for the Transitional Child Care program.

States will be able to provide care directly, by use of purchase of service contracts or vouchers, by providing cash or vouchers directly to the family, by reimbursing the family, and using other arrangements as the State agency deems appropriate.

The President signed OBRA 90 into law on November 5, 1990. However, the provisions regarding At-Risk Child Care were effective October 1, 1990. The Family Support Administration (FSA) issued guidance (Action Transmittal CC-FSA-AT-90-1 dated December 19, 1990) to States on how to apply to operate an At-Risk Child Care program prior to the issuance of final regulations. As of April 1, 1991, 19 States have applied to operate At-Risk Child Care programs.

Child Care and Development Block Grant

The other child care program authorized by OBRA 90, the Child Care and Development Block Grant (CCDBG), is intended to provide child care services for low-income families and to increase the availability, affordability, and quality of child care and development services. A total of $2.5 billion is authorized for that block grant for fiscal years 1991-1993, and such sums as may be necessary for fiscal years 1994 and 1995. Funding in the amount of $732 million will become available in September, 1991. Regulations will be issued for the CCDBG program.

Earned Income Credit

Although the Earned Income Credit (EIC) program is not administered by the Administration for Children and Families, it is an additional program to assist the working poor that needs to be considered as an important step toward increasing family self-sufficiency. It was created by Congress in 1975 and greatly expanded in OBRA 90. The EIC is a refundable tax credit provided to low-

income families with children in which a parent works. In 1991, families are eligible if their incomes are below $20,264, an amount that is indexed to inflation each year. Even families earning too little to pay taxes receive the credit if they file a federal income tax return. The EIC can help families make the transition from welfare to work by boosting their work-related income. It serves as an important resource for families that receive public assistance while working at low wage jobs. For families that have worked their way off welfare, the EIC can make the family's take-home pay compare more favorably with the welfare check it once received. Families can also receive EIC throughout the year in their regular paychecks by filing a W–5 form with their employer. In this way, families can use the money to meet ongoing needs of their children. Changes to the EIC enacted in OBRA 90 guarantee that EIC benefits will not count as income when eligibility and benefit levels are determined for many other federally supported programs, making the advantage to working families still receiving benefits even greater.

A major goal in developing regulations for At-Risk Child Care is to provide policies that are consistent with other child care administered by ACF whenever possible.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;

—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or

—Has 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.

Because this program will have an annual effect on the economy of $100 million or more, per discussion with the Office of Management and Budget (OMB), the regulation is considered a major rule. The analysis required by Executive Order 12291 will be included in the final rule.

Paperwork Reduction Act

Certain sections of these proposed regulations contain information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Respondents: State agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 257.21:				
Existing	XXX	XXX	XXX	XXX
Proposed	54	.5	50	1,350
45 CFR 257.50:				
Existing	XXX	XXX	XXX	XXX
Proposed	54	1	50	2,700
45 CFR 257.66:				
Existing	XXX	XXX	XXX	XXX
Proposed	54	4	1.125	243

Total Existing Burden Hours: XXX
Total Proposed Burden Hours: 4293
Total Difference: +4293

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspect of the information collection requirements, including suggestions for reducing the burdens, should direct them to the Administration for Children and Families, Office of Family Assistance, (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that this regulation, if promulgated, will not result in a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Certain small entities, such as providers of child care services, could receive a positive benefit from this program, but regulatory flexibility analyses are required for adverse impacts only.

Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required. This regulation is issued under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

Following is the assessment of this action using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of States to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

Section 5081 of OBRA 90 provides States with the option of providing a program of child care for low income working families who are at risk of becoming eligible for AFDC. The proposed regulations give States broad

flexibility in defining who is eligible for the program, in choosing methods of providing care, and in establishing sliding fee scales.

Child care provided under section 402(i) of the Act must meet applicable standards of State and local law. This language is the same as in section 402(g) of the Act which provides child care for AFDC recipients who are working or in approved training or education and former recipients eligible for Transitional Child Care. In these regulations we clarify that applicable standards are licensing or regulatory requirements that are generally applicable to care of a particular type regardless of the source of funding for the care. This means that for child care under title IV–A a State may not reject a parent's choice of child care provider because that provider does not meet licensing or regulatory standards for that particular type of care if those standards are not generally applicable to care of that type.

This policy does not decrease a State's ability to set standards for child care in general. It does not set national standards. As described above it does limit a State's ability to deny a parent's choice of provider in those limited cases where the State has set separate standards for publicly-funded child care. However, rather than substituting Federal policymaking for State policymaking, we propose to empower parents with decisionmaking over who should care for their children. This is consistent with another principle enunciated in Executive Order 12612 which says that "Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort."

Therefore, on balance, we do not believe this regulation has a significant federalism effect.

Analysis Required by Executive Order 12606 on the Family

The At-Risk Child Care Program is expected to have an overall beneficial family impact. This analysis discusses that impact in terms of the criteria in Executive Order 12606.

(a) The objective of the At-Risk Child Care Program is to provide child care to low-income families who are not currently AFDC recipients, who need care to accept or maintain employment, and who are at risk of becoming AFDC-eligible. The goals of economic independence and prevention of welfare dependency are promoted through continued employment resulting in more secure families.

The At-Risk Child Care program may provide financial aid to both the single parent and the two-parent family, if such care is necessary for employment, and thus self-sufficiency. This increase in self-sufficiency will help strengthen families and ameliorate the erosive effects of poverty.

(b) The At-Risk Child Care program provides significant support for parents' authority and right to nurture and supervise their children in affordable child care settings, which will enable parents to continue to work to achieve self-sufficiency.

Parents will continue to have maximum control and supervision of their children as they would have in any working family. The choice of child care providers is with the parent. Non-family providers are subject to State or local requirements of registration, certification, or licensing. However, this will not affect parents' ability to choose the kind of care with which they are most comfortable.

(c) At-Risk Child Care does not substitute governmental activity for any of the functions of the family. Parental responsibility for the support of children is fostered by the At-Risk Child Care program because it assures parental choice of caregivers and the parents' ability to work and provide for the family. Furthermore the family will contribute to the cost of care based on the family's ability to pay, in accordance with a sliding fee scale formula established by the State IV–A agency.

(d) The At-Risk Child Care program is not specifically designed to increase or decrease the family's earnings. However, since child care provided with At-Risk Child Care funds will permit families to accept or maintain employment, we expect the overall effect will be to increase family earnings by increasing employment opportunities.

(e) The At-Risk Child Care program shall be made available through non-Federal levels of government, i.e., States and localities. The Federal Government will not intrude upon family autonomy or decisions.

(f) The At-Risk Child Care program reinforces the notion that the strength of the American family is important to the Nation's economy. Targeting families, who would otherwise be at risk of becoming welfare dependent, with financial assistance for child care, sends the message that families attempting to maintain economic independence from welfare is a concern for all levels of the government.

(g) The emphasis on self-sufficiency in the At-Risk Child Care program will send a positive message to young people. The message is that those striving to maintain economic independence from welfare can get help from society to do so.

The preamble discussion generally follows the sequence of the proposed regulations, with the exception that the description of conforming changes to the existing regulations is last, whereas the conforming changes precede the At-Risk Child Care sections in the proposed regulations.

PART 257—AT-RISK CHILD CARE PROGRAM

Purpose (§ 257.0 of the Proposed Regulations)

This section describes the purposes of the At-Risk Child Care program. States may provide child care to low income families in accordance with the regulations in this part to allow such families to work and thereby avoid receiving AFDC.

State IV–A Agency Administration (§ 257.10 of the Proposed Regulations)

Section 5081 of OBRA 90 amends the Act to add the At-Risk Child Care program at section 402(i). As part of title IV–A of the Act, the "State agency" referred to in section 402(i) is the single State agency as provided at section 402(a)(3) of the Act. Under longstanding Federal policy regarding the concept of "single State agency," the State IV–A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in overall administration or supervision of the program (see 45 CFR 205.100).

For child care provided under section 402(g) of the Act, this has meant that, operationally, a State IV–A agency could have another entity perform such non-discretionary functions as providing information to individuals seeking child care, issuing the payment to the child care provider, and collecting fees in accordance with the sliding fee schedule established by the State IV–A agency.

However, eligibility determinations must be made by the IV–A agency. Child care under section 402(g) of the Act is guaranteed to those meeting the statutory requirements, i.e., to employed AFDC recipients, to AFDC recipients in approved education or training programs, and to former AFDC recipients who are working and meet the requirements at section 402(g). Therefore, because such care is a guarantee and eligibility for child care under section 402(g) is inextricably

linked to either current or past receipt of AFDC, the determination of eligibility for child care under section 402(g) remains a discretionary decision with the State IV–A agency.

One of the goals of child care provided under section 402(i) is to prevent families from needing AFDC by providing child care so that they can work. Child care is not guaranteed, and eligible families will not be AFDC recipients, although it is possible that they might be former recipients. Therefore, questions have arisen about whether the State IV–A agency could have another entity determine eligibility for At-Risk Child Care.

At § 257.10(c) we propose to allow the State IV–A agency to enter into contracts or agreements with other entities to perform administrative functions, including the determination of eligibility, and provide services under the At-Risk Child Care program.

We believe that there are significant differences in child care provided under section 402(i) which distinguish it from the other programs under title IV–A. First, as cited above, eligible individuals are not AFDC recipients by definition. Therefore, there is not an immediate connection to the State IV–A agency. In fact, many eligible individuals might not avail themselves of child care services under section 402(i) if it meant going to the welfare office. If preventing the need for welfare is one of the goals of this program, requiring a family to go to the welfare office to obtain services might be counterproductive. Second, At-Risk Child Care is not guaranteed, and, therefore, the protections that must be afforded by the State IV–A agency do not apply. Third, it would be consistent with the statement of the OBRA 90 conferees that "States will have maximum flexibility in determining how these new grant funds are used." H.R. Rep. No. 964, 101st Cong., 2nd Sess. 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627.

The proposal to allow the State IV–A agency to contract or enter into an agreement with another entity for certain functions related to the At-Risk Child Care Program does not relieve the State IV–A agency of its overall responsibility for administering the program. Therefore, the proposed regulations at § 257.10(b) enumerate the functions that the State IV–A agency must perform. Chief among these is the issuance of all policies, rules, and regulations, including the criteria for eligibility, governing the program. An entity performing functions related to the At-Risk Child Care program must do so in accordance with the policies, rules, and regulations issued by the State IV–A agency.

A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e., the State IV–A agency, with adequate legal authority, to which the Federal Government can look to account for the expenditure of Federal funds under the program. Therefore, while we have proposed broad contracting authority for State IV–A agencies in carrying out the At-Risk Child Care program, it should be clear that the Administration For Children and Families will hold the State IV–A agency responsible for the proper and efficient administration of the program and will take any necessary compliance or disallowance actions against the State IV–A agency.

Requirement For A State At-Risk Child Care Plan (§ 257.20 of the Proposed Regulations)

The At-Risk Child Care program is authorized under a new section of the Social Security Act, 402(i), and therefore is not part of the title IV–A (AFDC) plan which is covered in section 402(a) of the Act. Although section 402(i) does not specifically address whether a plan is needed regarding the At-Risk Child Care program, we propose that At-Risk Child Care be covered by a plan for two reasons. First, child care is matchable under section 403 of the Act which provides that payments are made to States under approved plans. Secondly, we do not believe the Secretary could fulfill his statutory obligations unless a State plan which specified how the State would meet the requirements of section 402(i) of the Act is required. Section 1102 of the Act requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act.

We propose to have the At-Risk Child Care Plan submitted as an amendment to the State Supportive Services Plan under parts 255 and 256. We believe that this approach will lessen the administrative burden on the States for several reasons. The State Supportive Services Plan is the plan under which a State provides supportive services for JOBS participants and child care for employed AFDC recipients, for participants in approved education and training activities (including JOBS), and for individuals who lose eligibility for AFDC due to employment (i.e., Transitional Child Care). The State IV–A agency is responsible for administering child care provided under both sections 402(g) and 402(i) of the Act and is, therefore, responsible for submitting both plans. Several of the provisions in the two sections of the Act are the same. These include the methods of payment that States may adopt, the requirement to establish local market rates and to define sliding fee scales, and to coordinate with other child care programs. These provisions would have to be incorporated into both State Plans.

We intend to develop a State plan preprint for the At-Risk Child Care program which will be submitted for approval to the Office of Management and Budget. To the extent possible, we plan to do this by modifying the existing State preprint for Supportive Services to reflect the provisions of At-Risk Child Care.

By considering the At-Risk Child Care program to be part of the State Supportive Services Plan, there will be some additional burden on the States. This arises from the requirement that biennial updates of the State Supportive Services Plan must be submitted to HHS. However, we believe that this slight burden is justified by two points. First, States must update local market rates under the provisions of § 255.1(i) which will result in updating local market rates for child care under section 402(i) also since we have defined local market rates at § 257.63 the same as the provisions under § 255.4. The revised plan will provide a vehicle for doing this. Second, after an initial three-year plan, State Plans under the Child Care and Development Block Grant Act of 1990 must also all be submitted biennially. This means that, beginning in FY 1995, State Supportive Services plans and Child Care and Development Block Grant plans will be on the same schedule for submission to HHS. Incorporating the provisions of At-Risk Child Care into the existing State Supportive Services Plan so that all plans revised and submitted simultaneously will thus facilitate coordination of child care within States.

Submission of the At-Risk Child Care Plan

The At-Risk Child Care program provisions under section 5081 were effective October 1, 1990. In order to provide initial guidance to States so that they could begin to provide At-Risk Child Care promptly if they so chose, FSA issued an Action Transmittal (CC–FSA–AT–90–1 dated December 19, 1990) describing how States could apply for FY 1991 funds. Applications for FY 1991 funds are approved on an interim basis pending issuance of final regulations. An approved interim application will remain in effect until the Secretary acts on a State's plan that is submitted on

the approved preprint. At § 257.20(c) we propose to require States operating an At-Risk Child Care program under an approved interim application to submit an amendment during the quarter following the quarter in which the preprint is issued. We recognize that States may have to make some operational modifications as a result of the final regulations and are giving States some flexibility as to exactly when they submit the plan to conform to the final regulations. Since we are considering the At-Risk Child Care Plan to be an amendment to the State Supportive Services Plan, the effective date of the amendment may not be earlier than the first day of the quarter in which it is submitted.

For States that are not operating an At-Risk Child Care program at the time the final regulations are published, we propose the following. The State may submit an amendment to the State Supportive Services Plan at any time to implement a program. As an amendment to the State Supportive Services Plan, the effective date may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted. However, a State is entitled to its "maximum grant" (as defined at § 257.60(c)) for the year. For example, suppose a State's limitation for FY 1992 is $1 million, and for FY 1993 is $1.5 million. It submits an amendment on March 1, 1993, to begin operating an At-Risk Child Care program. The effective date of the amendment may not be earlier than January 1, 1993. The State is entitled to its maximum grant of $2.5 million dollars upon approval of the plan; however, it may not claim expenditures for any period prior to January 1, 1993.

State Plan Content (§ 257.21 of the Proposed Regulation)

The regulation at § 257.21 lists the information that we propose to require in the At-Risk Child Care Plan, which will be part of the State Supportive Services plan described at § 257.20. We will provide preprint pages that will be part of the State Supportive Services Plan. The preprint will guide States in submitting the At-Risk Child Care Plan and will expedite review. It will also provide a basis for comparison of State programs.

In general, the proposed content of the At-Risk Child Care Plan reflects provisions that are described in other parts of this proposed regulation, and, therefore, it is not necessary to describe them here. For example, § 257.21(b)(2) of the proposed plan regulation requires the State to define "low income," which is described in the proposed regulation at § 257.30(a)(1) and discussed in the preamble to that section. However, there are a few additional provisions that we elaborate on here.

The first is the requirement at § 257.21(d) of the proposed regulations that the State describe its priorities for providing At-Risk Child Care. This requirement is based on the statutory provision at section 402(i)(6)(B)(ii) of the Act that the State submit as part of its annual report "the criteria applied in determining eligibility or priority for receiving services." We believe that a State cannot report on its priorities in the annual report if it has not established priorities, and that this is so fundamental to the operation of the program that it should be incorporated in the State At-Risk Child Care Plan. However, as we discuss more fully in the preamble to § 257.50 on Reporting Requirements, we will consider the State to have reported on this provision by submitting the State's priorities in the State Plan, and will not require this information in the Annual Report.

The second is the proposed regulation at § 257.21(f) that a State list the political subdivisions in which the At-Risk Child Care program is offered, if not available statewide. Unlike the provisions of sections 402(a) and 402(g) of the Act which must be available statewide, the At-Risk Child Care program under section 402(i) of the Act is optional to the State, allows the State to set priorities for services, and is subject to a cap on the amount of Federal funds available to reimburse the State for its expenditure. We, therefore, believe that a State need not offer the program statewide. However, the State must list in its State Plan where it will be available.

Eligibility (§ 257.30 of the Proposed Regulations)

Section 402(i)(1) of the Act provides, "Each State agency may, to the extent that it determines that resources are available, provide child care * * * to any low-income family that the State determines is not receiving aid under the State plan approved under this part; needs such care in order to work; and would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided."

Low Income

The proposed regulations at § 257.30(a)(1) give States the flexibility to define the low income requirement of the program. States may wish to consider developing (or adopting) an income test that not only allows for variations in family size or the number of children in the family needing care, but also serves as a common standard for other child care services the State may provide.

A number of Federal programs, including the Community Services Block Grant and Head Start, use the HHS poverty income guidelines, or a percentage of them, as eligibility criteria. As they are commonly understood indicators of low-income, States may wish to consider using them for the At-Risk Child Care program.

The 1991 poverty income guideline for the 50 States and the District of Columbia for a family of 2 is $8,880; for each additional member, it adds $2,260. The 1991 poverty guideline for Alaska for a family of 2 is $11,110; for each additional member, it adds $2,820. The 1991 poverty guideline for Hawaii for a family of 2 is $10,210; for each additional member, it adds $2,600. These guidelines were published in the **Federal Register** on February 20, 1991 (56 FR 6859), and States are referred to the **Federal Register** for additional information about the guidelines.

Another possibility is to adopt the standard for eligible families established by the State for the Child Care and Development Block Grant. Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 provides that the State's standard for income of an eligible family cannot exceed 75 percent of the State median income for a family of the same size.

A State's definition of low income must be provided in its At-Risk Child Care Plan, as required at § 257.21(b)(2).

At risk of Becoming Eligible for AFDC

Besides having low income, a family must be "at risk" of becoming eligible for AFDC. While some have argued that "low income" is synonymous with being "at risk" of becoming eligible for AFDC, and that, therefore, there should be no additional condition of eligibility, we believe that Congress intended to establish another test for eligibility. First, the construction of OBRA 90 suggests that from the broad category of "any low income family," the State must make a further determination that the individual meets three criteria: (1) Not receiving AFDC; (2) needs the care in order to work; and (3) at risk of becoming eligible for AFDC if such care were not provided. Furthermore, we believe that requiring the State to define "at risk" other than in terms of income alone is appropriate because of the additional language in the Act at section 402(i)(6)(B)(ii) on the annual report which requires the State to include "the criteria applied in determining eligibility

or priority for receiving services, * * *" A State's definition of "at risk" could be used as a basis for establishing such criteria.

However, in keeping with our goal of State flexibility, we propose to allow States to define "at risk" in their State At-Risk Child Care Plan. The following definitions of "at risk" are offered only as examples that States may want to consider: (1) A family not eligible for Transitional Child Care because it was not receiving AFDC three of the previous six months; (2) a family whose eligibility for Transitional Child Care has expired because of the 12-month limit; (3) a family not receiving AFDC because the State has a time-limited Unemployed Parent (AFDC–UP) program and the family obtains employment during the period of non-receipt of aid; or (4) a family who is eligible for, but elects not to receive AFDC, because its earnings would have resulted in only a minimum payment.

We propose not to require States to limit eligibility for At-Risk Child Care to only those families who otherwise would qualify for AFDC, but for the receipt of At-Risk Child Care. We do this because we believe that it is in keeping with the purpose of At-Risk Child Care to avoid welfare dependence whenever possible. For example, requiring a family to meet the AFDC resource limit (such as the $1000 limitation on resources) might make a family ineligible for At-Risk Child Care.

We also considered whether there were any factors that were so fundamental to receiving AFDC that a family could not be "at risk" of receiving AFDC if it did not meet them. For example, we considered whether there would have to be a child meeting the definition of "dependent child" in section 406 of the Act. While there clearly must be a child in the family who needs care, in keeping with our goal of State flexibility, we propose allowing the State to decide if it will require that the child meet the definition of "dependent child."

Thus, a State may adopt any or all of the eligibility criteria for AFDC if it so specifies in its State At-Risk Child Care Plan. For example, it could require that there be at least one "dependent child," or it could require a family to meet the limits on resources.

In Order to Work

We propose to define "in order to work" as "to accept employment or remain employed." This is consistent with section 402(g)(1)(A)(i)(I) of the Act and the implementing regulations at § 255.2. This definition clarifies that child care under section 402(i) is related to actual employment and not to education or training activities that would be necessary in order for an individual to work at some future point in time. In contrast, section 658P(4) of the Child Care and Development Block Grant Act of 1990 specifically provides that child care is available so that a parent or parents can work or attend a job training or educational program.

The proposed regulations at § 257.30(c) allow States the flexibility to provide child care under this section for up to two weeks for families in which an individual has a bona fide job offer but is waiting to begin the employment if child care arrangements would otherwise be lost. Additionally, States may provide child care for up to one month when an individual is between jobs and child care arrangements would otherwise be lost. For example, if an individual accepts a new job and there is a break between the end of the previous employment and the beginning of the subsequent job, and child care arrangements would be lost if the child were taken out during this break, the State may pay for care for up to one month. These provisions are included to ensure that child care is not lost, and continuity of care is provided, so that a family can continue to be self-sufficient. The State must describe its policies on providing care before and during gaps in employment in its State At-Risk Child Care Plan, as provided at § 257.21(l).

Age of an Eligible Child

Under the proposed regulations at § 257.30(b) the State may provide care to any child who is under the age of 13. The State may also provide care to a child who is age 13 or above and is physically or mentally incapable of self-care or who is under court supervision. Age thirteen is consistent with the limits for child care under section 402(g) of the Act as established in the regulations at § 255.2 and § 256.2. It is also consistent with the limit established for the Dependent Care Tax Credit as amended by section 703(a) of the Family Support Act and the limit for child care under section 658P of the Child Care and Development Block Grant Act of 1990.

For children who are eligible for At-Risk Child Care because they are physically incapable of caring for themselves or are under court supervision, we propose at § 257.30(b) to use the upper age limit as defined for a dependent child at section 2.2B of the State IV–A plan (i.e., under age 18 or up to age 19). This proposal is also consistent with the upper age limit for such child care provided under section 402(g), because eligibility for child care under section 402(g) is limited to dependent children requiring such care, or in the case of Transitional Child Care, children who, if needy, would be dependent.

Fee Requirement (§ 257.31 of the Proposed Regulations)

Section 402(i)(3)(A) of the Act requires the State agency to establish a sliding fee formula for the purpose of calculating a family's contribution for At-Risk Child Care. The proposed regulations at § 257.31 provide States with flexibility in determining the formula for calculating these fees.

For example, as these statutory requirements are the same as the statutory requirements for a sliding fee scale for transitional child care under section 402(g) of the Act, the State may elect to adopt its existing Transitional Child Care scale. As an alternative, it could modify the existing sliding fee scale for Transitional Child Care to provide for a higher income cutoff. This might also be an opportunity for a State that has had the same sliding fee scale in place since the implementation of Transitional Child Care to review the existing scale to determine its effectiveness.

As with Transitional Child Care, we propose at § 257.31(b) to require that all recipients of benefits under this Part make some contribution. In establishing this requirement for individuals just getting off AFDC under Transitional Child Care, we recognized that the contribution from those with the lowest income levels might be no more than a token amount. However, we considered it essential to establish the transitional nature of the benefits and to develop recipient responsibility for self-support.

We believe that the reasons for having a copayment requirement for At-Risk Child Care are the same. Making a copayment, even a token amount, reinforces the sense of responsibility in parents for the care and support of their children. Assuming the cost of child care by increments will enable the family to achieve self-sufficiency gradually.

Section 402(i)(4)(B) of the Act provides that the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986. However, contributions made by a family toward the cost of care pursuant to the State's sliding fee scale may be eligible for the Dependent Care Tax Credit under section 21 of the Internal Revenue Code of 1986.

Methods of Providing Child Care (§ 257.40 of the Proposed Regulations)

Section 402(i)(2) of the Act provides States with a number of methods to provide child care. These are the same methods that are provided in section 402(g) of the Act for child care for AFDC recipients and former AFDC recipients eligible for Transitional Child Care. Specifically, the State IV–A agency may:

(1) Provide the care itself;

(2) Arrange care through public or private providers by use of purchase of service contracts or vouchers;

(3) Provide cash or vouchers in advance to the caretaker relative so that the child care costs may be prepaid;

(4) Reimburse the caretaker relative for child care expenses incurred; or

(5) Adopt such other arrangements as the State IV–A agency deems appropriate.

The fundamental principle of the right of the parent to choose appropriate child care is discussed in the preamble to the proposed regulations at § 257.41 concerning applicable standards of State and local law.

To insure that each parent does have choice, we propose in § 257.40(b) to require that the State have at least one method of payment by which self-arranged child care can be paid. This requirement is consistent with requirements under parts 255 and 256. Of the four methods specified in § 257.40(a) we believe that two can most effectively be used to ensure parental choice, and we strongly urge that States adopt at least one of these methods. These are providing the parents with cash or vouchers in advance or reimbursing the caretaker relative for child expenses incurred. We elaborate on these below.

Vouchers

Many States are using some form of a voucher/certificate system for child care delivery. This system can encourage parental choice regarding the selection of a provider, while ensuring that the selected provider receives the child care payment from the State IV–A agency (or its agent). In the case of transitional child care or At-Risk child care, the parent's contribution must still be paid by the parent. Vouchers/certificates can increase the parents' responsibility and choice compared to methods in which the State IV–A agency (or its agent) makes payments directly to the child care provider through purchase of service or a contractual arrangement. In order for the voucher/certificate method to afford such choice, it must be possible for the parent to easily obtain it, for the provider to receive timely payment for services rendered, and for the parent to use it with any provider.

By October 1, 1992, any State which receives funds under the Child Care and Development Block Grant Act of 1990 must have procedures in place to provide parents with certificates with which they can arrange for child care. We expect that States will actively explore ways in which a certificate system could be used for At-Risk Child Care as well.

Direct Payments to the Caretaker Relative

The State IV–A agency (or its agent) may pay the caretaker relative directly either by providing payment in advance or through reimbursement. This method of payment maximizes parental choice and responsibility for child care.

Coordination

Section 5081(d) of the OBRA 1990 amends section 402(g) of the Act to provide that activities under section 402(i) must be coordinated with existing early childhood education programs in the State, including Head Start programs and preschool programs funded under chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

We believe that coordination in planning and delivery of services is essential to prevent duplication, to assure that child care services are available to the maximum number of eligible families, and to provide a viable range of child care options for parents.

One goal of a coordinated service delivery system is to create a fabric of seamless service. Seamless service means providing eligible parents access to and payment for child care services and programs which bridge and supplement the parents' child care needs, even as eligibility changes over time; this is done without the necessity of changing the child care provider. In addition, such a coordinated service delivery system could create a complete day of service for an eligible child when programs do not last for the entire day (e.g., child care services before and after a Head Start class).

Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State and local organizations. They should also enable smooth transitions for families as their situations change over time.

Since States will be required to submit biennial updates of their plans, we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

The proposed regulation at § 257.40(d) contains the requirement to coordinate. In addition to the agencies listed in section 402(g) of the Act, we have added existing child care resource and referral agencies based on the regulations at § 255.3(h). We believe that, as with AFDC child care and Transitional Child Care, this will assist the State IV–A agency to identify potential resources and minimize duplication of effort.

Child Care Standards (§ 257.41 of the Proposed Regulations)

Section 402(i)(5)(B) of the Act provides that Federal financial participation (FFP) is only available for child care that meets applicable standards of State and local law. In the proposed regulations at § 257.41(a)(1), we have added Tribal law because child care may be provided on an Indian reservation, and if Tribal standards exist, they are the applicable standards. In the absence of Tribal standards, State standards would apply unless Tribal areas are excepted under State law.

Applicable Standards

We propose to add a provision at § 257.41(a)(2) to define applicable standards as standards that are generally applicable to care of a particular type in a State, local area, or Indian reservation, regardless of the source of payment for the care. As a similar definition is proposed for addition to the existing regulations at § 255.4(c)(2), this definition of applicable standards applies to all child care funded under title IV–A.

Child care for which there are no applicable standards, i.e., no licensing or regulatory requirements set by the State or locality that specifically regulates child care, is legal care. Under section 402(i) of the Act, such care is available for use by low income working families who need care in order to work and are at risk of becoming eligible for AFDC. For example, if a State does not regulate family day care providers caring for less than three children, such care is legal, and, if the caretaker relative selects that provider, the State must pay for the care. In addition, if a provider is exempt from child care licensing requirements for reasons other than the source of payment, e.g., a sectarian child care center, such care would be legal because there are no applicable standards. Child care for which there

are no standards will not be affected by this proposed regulation.

In addition, child care standards that are generally applicable are unaffected by this proposed regulation. Child care provided under section 402(i) is subject to any standard mandated in any law or regulation of the State or locality that generally applies to care of the same type in the State or locality, e.g. center care, group family day care, family day care, and in-home care. For example, we know that all States have child care licensure laws that include standards which address health and safety conditions and other aspects of care provided at child care centers. Since these are standards that have general applicability, they apply to title IV–A child care.

However, some States impose child care standards and regulations on publicly-funded child care that are not applicable to privately purchased care. The question has arisen whether, under title IV–A, a State may deny payment for child care which violates no general child care requirements in the State, but which does not meet an additional set of requirements which apply only to publicly-funded care. The proposed regulation at § 257.41 precludes this. For child care funded under title IV–A, applicable standards include only those that are generally applicable to care of a particular type. A State may not set separate standards which apply only to title IV–A-funded care. If a State has standards which affect only publicly-funded care, and a caregiver of that type of care does not meet them, for title IV–A purposes (under both sections 402 (g) and (i)) that care is still "legal," and the State must pay for that care.

In proposing this policy, we believe that "parental choice" must be a paramount consideration. Just as it is crucial for JOBS participants who attend mandatory work and training activities and former recipients who are eligible for Transitional Child Care to have choice and control over who will take care of their children when the parents must be away from them, it is crucial for families eligible for the At-Risk Child Care program to have choice also. By definition, these families need the care in order to work, or otherwise they would likely become eligible for AFDC. Therefore, it is appropriate that they have the same access to the care provider of their choice that we propose families receiving child care under 402(g) have. Furthermore, it would be antithetical to our overall goal of supporting the family in its quest to remain independent and self-sufficient to interfere in so personal and critical a decision as who will take care of one's children.

Registration

Under section 402(i)(5)(c) of the Act, FFP is available for payments made to a provider (other than an individual caring for members of his/her own family) only if the child care provider is licensed, regulated, or registered. The proposed regulations at § 257.41(a), as discussed previously, address child care licensing and regulatory requirements. Section 257.41(b) of the proposed regulations addresses the requirement for registration.

Although there is no discussion in the legislative history, we think Congress intended the At-Risk Child Care registration requirement to be an alternative to child care licensing and regulatory standards, not another form of them. To interpret the provision otherwise would mean Congress was mandating that States set licensing and regulatory standards for all child care. It is unlikely Congress would do this without an explicit provision. We see the registration requirement as being similar to the registration requirement in section 658E(c)(2)(E) of the Child Care and Development Block Grant Act of 1990. In that provision, the requirement is intended to provide the State with basic information about unlicensed providers so that the State can pay the provider and can furnish the provider with information on training, technical assistance, regulatory requirements, and other topics.

Therefore, in § 257.41(b)(2) we propose that registration procedures must (1) only collect information necessary for the State to pay providers or furnish information to providers; (2) facilitate appropriate and prompt payment to providers; (3) allow providers to register with the State or locality after selection by the parent; (4) be simple and timely; and (5) not exclude or have the effect of excluding any categories of child care providers.

In keeping with our goal of State flexibility, we do not propose to define exactly what constitutes registration. We expect that registration of providers for the At-Risk Child Care program to be a simple process, such as giving the State or locality the provider's name and mailing address. States or localities may also require providers to supply additional information, such as birth date or other identifying data needed to facilitate appropriate payment to the provider, and to allow the State or locality to disseminate information to the provider.

If States wish to require providers to meet standards, such standards must be set as part of the State's licensing and regulatory standards rather than as part of the At-Risk Child Care registration process which is intended only for information exchange with unlicensed and unregulated providers. Some States already have "registration" procedures, either on a mandatory or a voluntary basis. Such procedures may meet the requirements for registration that apply to At-Risk Child Care as described in § 257.41(b) if they are designed only to collect or exchange basic information. However, if a State's registration requirements include standards, they are considered licensing and regulatory requirements, and they do not meet the requirements of § 257.41(b). The State will have to adopt modified registration procedures for unlicensed or unregulated care provided under section 402(i) of the Act.

We propose at § 257.41(b)(1) to require registration before any payment under the At-Risk Child Care program is made. This proposal makes registration under the At-Risk Child Care program consistent with the registration requirement in the Child Care and Development Block Grant of 1990 and will allow States to design compatible procedures. As previously discussed, we expect registration of providers to be a simple process which will facilitate appropriate and prompt payments. Payments must be timely so that providers are not effectively discouraged from offering child care services. Although we are not regulating a time frame between request for registration and payment, States must ensure that it is a reasonable period. Section 257.21(h) of the proposed regulations requires States to specify this time frame in their At-Risk Child Care plans.

We propose to ask States to describe their registration procedures in the State At-Risk Child Care plan at § 257.21(h).

Parental Access

Section 402(i)(5)(C)(ii) of the Act provides that FFP is only available for amounts paid for child care to the extent that the provider of the care allows parental access. We propose to incorporate this provision at § 257.41(c).

We believe that parental access to children within the care setting enhances parental choice and involvement. Parents are concerned about health, safety, and quality of care their children receive; parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Reporting Requirements (§ 257.50 of the Proposed Regulations)

Section 402(i)(6) of the Act requires that, beginning with fiscal year (FY) 1993, each State prepare and transmit to the Secretary an annual report on the activities of the State carried out with funds made available under section 403(n) of the Act. Section 402(i)(6)(B) describes the content of the report. It is to contain information on: (1) The number of children served and the average cost, by type of service; (2) the State's licensing and regulatory (including registration) requirements; and, (3) its enforcement policies and practices in effect which apply to child care providers. Section 257.50(a) of the proposed regulations contains the State reporting requirements.

Section 402(i)(6)(B)(ii) of the Act requires information about the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules. However, as described in § 257.21, we propose to collect that information as part of the State At-Risk Child Care Plan that the State submits in order to provide services. We believe that such information is so fundamental to the way in which the State operates its program that it should be contained in the State Plan. Since we propose to require such information in the State Plan, we do not propose to collect it again in the annual report submitted by the State. This will not affect the ability of the Secretary to report to Congress because the Administration For Children and Families will have copies of the approved State Plans from which to gather the information. Furthermore, it will not affect public review of the information or requests for such information by any interested public agency, because the State Supportive Services Plan is also a public document which can be accessed. We further believe that such an approach is consistent with the statutory provision at section 402(i)(6)(C) of the Act that the Secretary ensure that compliance with the reporting requirements not be unduly burdensome on the States.

Section 402(i)(6)(A)(iii) of the Act requires that the Secretary annually compile and submit to Congress the State reports. In order for the Secretary to comply with this provision, we propose to require States to submit their reports to the Secretary no later than 90 days after the end of the Federal fiscal year for which they are reporting. This provision is contained in § 257.50(b).

Section 402(i)(6)(A)(ii) of the Act requires that the State make available for public inspection within the State copies of each report and provide a copy of each report, on request, to any interested public agency. The proposed regulations at § 257.50(c) contain this provision.

Section 402(i)(6)(C) of the Act requires the Secretary to issue uniform reporting requirements within twelve months after the date of the enactment of the subsection, or by November 5, 1991, for use by States in preparing the information required. To insure that compliance with the statutory requirements is not unduly burdensome on the States, the Department intends to look at existing reporting requirements for child care provided under section 402(g) of the Act and the requirements for reporting under the new Child Care and Development Block Grant in developing these uniform reporting requirements.

Availability of Funding (§ 257.60 of the Proposed Regulations)

Section 403(n)(2)(B) of the Act establishes an annual limitation on the amount of funds appropriated for title IV–A that may be paid to States for expenditures made under the At-Risk Child Care program. Federal funding is available for the allowable expenditures of the program. The term expenditures, which we define as actual cash disbursements, has the same meaning and application as for child care expenditures made under parts 255 and 256. States receive funds for expenditures only. Unliquidated obligations must not be reported.

All 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa may operate an At-Risk Child Care program. Because American Samoa does not have an AFDC program, families cannot be at risk of becoming AFDC dependent. Therefore, in the case of American Samoa, implementation of an AFDC program must occur prior to or simultaneous with implementation of the At-Risk Child Care program.

State's Limitation

For purposes of clarification, we will use the term "limitation" to mean a State's portion of funds based on the formula provided in sections 403(n)(2)(A) and (B) of the Act.

Section 403(n)(2)(A) of the Act provides that a State's limitation is equal to a percentage of the total available funds for a fiscal year that represents the ratio of children in the State to the national total number of children. We propose at § 257.60(b) to use the number of children under age 13 as the basis for calculating each State's limitation. We believe this is a reasonable approach since it is consistent with the age limits on eligibility established at § 257.30.

The Act provides that the data on the number of children for determining each year's limitation shall be based on data available for the second preceding fiscal year, i.e., FY 1989 data shall be used in determining funds available for FY 1991. For determining FY 91 limitations, the numbers of children under 13 for the 50 States and the District of Columbia were taken from the Bureau of the Census estimates for 1989.

Annual estimates for Puerto Rico, the Virgin Islands, Guam and American Samoa are not published by the Bureau of the Census. Thus, actual numbers of children under 13 from the previous decennial census report were used. In the future, we will use similar data, or better data, if available, for determining fiscal year limitations.

Maximum Grant

Section 403(n)(2)(C) of the Act provides that the amount not paid to a State in a fiscal year, i.e., the amount representing the difference between the limitation for that year and the total of grant awards made in that year, may be added to a State's limitation for the next fiscal year. For purposes of clarification, the amount available for a fiscal year that represents the State's limitation for that year plus the unpaid amount added from the prior year will be referred to as a State's "maximum grant." An unpaid amount added from a prior year may be added to the State's limitation for the next successive fiscal year only; it cannot be added to a fiscal year beyond the next successive fiscal year.

For example:

State A's limitation for year 1 is $100. It may request grant awards for the fiscal year which in total do not exceed $100. The State, however, requests a total of $80 for year 1. Prior to the beginning of year 2, State A is informed that its limitation for that year is $110. For year 2, the State's maximum grant is $130, i.e., $110 plus the $20 not paid from the previous year. If the total amount paid in year 2 is less than $110, the difference between the amount paid in year 2 and $110 (the year 2 limitation) will be added to the State's year 3 limitation to determine the maximum grant for the third year. If the total amount paid in year 2 is more than $110, no amount from year 2 can be added to the State's year 3 limitation.

Funding for the program is provided under title IV–A of the Social Security Act. Thus, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, funding is subject to the limitations in section 1108 of the Social Security Act.

Grant Awards (§ 257.61 of the Proposed Regulations)

We considered several methods of awarding grants for At-Risk Child Care. For ease of operation, we propose to follow the grant process in effect for child care under Parts 255 and 256, with some modification to reflect statutory differences in funding.

Prior to the beginning of a fiscal year (year 1), a State will be informed of its limitation. We will request that each State supply an estimate of expenditures for each quarter, as funds will be issued through quarterly grant awards. States will report actual expenditures on the quarterly expenditure report. We will adjust subsequent quarters' grant awards to reflect over- or under-estimates in prior quarters' expenditures.

Prior to the beginning of the following fiscal year (year 2), the State will be informed of its limitation for year 2. The amount unpaid for year 1 and the limitation for year 2, will constitute the maximum grant for year 2 in accordance with § 257.60. Quarterly estimates and grant awards for year 2 may not exceed the maximum grant for year 2.

The regulations applicable to title IV–A regarding the availability of funds, e.g., the timely filing requirements at part 95, subpart A, and the method for submitting estimates and making adjustments at § 201.5, will apply to the At-Risk Child Care program.

Matching Requirements (§ 257.62 of the Proposed Regulations)

Section 403(n)(1)(A) of the Act provides that expenditures made under the program are available for matching at the Federal Medical Assistance Percentage (FMAP) rate. This provision pertains to both child care services payments and administrative expenditures made in providing these services. The regulations at § 257.62(b) propose that expenditures made in a fiscal year will be matched at the FMAP rate in effect for that fiscal year.

Use of Donated Funds as Match

Current Administration For Children and Families policy provides, that for the purposes of the AFDC and JOBS programs, donated funds may be used as the State share of expenditures. Regulations at § 235.66 and § 250.73 provide conditions under which donated funds may be used as the State share of expenditures for AFDC training activities and JOBS program activities, respectively. Section G–4000 of part V of the Handbook of Public Assistance provides that donated funds may be recognized as State funds subject to Federal financial participation in administrative expenditures under the State IV–A Plan.

We propose at § 257.62(c) to allow public and private funds to be used as a State's share of matching costs as follows. For public funds, the funds must be appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP. They must not be used to match other Federal funds, and may not be Federal funds, unless such funds are authorized by Federal law to be used to match other Federal funds.

For private funds, the funds must be transferred to the State or local agency and under its administrative control. They must be donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions, and not revert to the donor's facility or use either directly or indirectly.

We also propose to add § 257.62(c)(3) which provides that any funds received by the State which do not meet the conditions set forth in the regulation but which are used for allowable expenditures of the program must be deducted from the State's total expenditure claims subject to FFP.

In-kind Contributions

The Act does not address the use of third party in-kind contributions as the non-Federal share of expenditures made under the program. We believe that the policy applicable to child care programs under parts 255 and 256 should apply to this program. This has also been longstanding policy under title IV–A. Therefore, the proposed regulation at § 257.62(c)(3) prohibits the use of third party in-kind contributions for use as the State share of expenditures for this program.

Waiver for Insular Areas

The regulation at § 257.62(d) proposes that the waiver provision of 48 U.S.C. 1469a(d) apply to the matching requirement for the Territories of Guam, the Virgin Islands, and American Samoa. Under this provision, the first $200,000 in expenditures made each fiscal year need not be matched. We considered applying the $200,000 waiver in matching requirements to title IV–A expenditures in the aggregate, i.e., for all expenditures under § 403 rather than permitting the waiver to be applied separately to the At-Risk Child Care program. However, since the plan amendment for the At-Risk Child Care program is not included in the title IV–A plan, the program is viewed as distinct from AFDC. Given this distinction and the fact that Congress did not increase the ceilings for Territories as set forth in section 1108 of the Act, we propose to apply the waiver of the matching requirement for the first $200,000 to the At-Risk Child Care program separately.

Allowable Expenditures (§ 257.63 of the Proposed Regulations)

Federal financial participation (FFP) is available only for allowable expenditures of the program. Section 402(i)(3)(B) of the Act provides that the payment for child care shall be in "an amount that is the lesser of (i) the actual cost of such care; and (ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)."

Applicable Local Market Rates

We propose to make the regulations at § 255.4 (a)(2) and (a)(3) on local market rates applicable to the At-Risk Child Care program. Under these regulations, the following basic principles apply: Each State IV–A agency must establish local market rates based on a representative sample of providers, obtained in a survey by the State IV–A agency or under an outside survey. Local market rates must be set at the 75th percentile of the rate for the type of care. Finally, local market rates must be determined by type of care such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool, and school children and whether there are different rates for full-time and part-time care.

We believe that adopting the same provisions for At-Risk Child Care that apply to child care provided under section 402(g) of the Act is appropriate for several reasons. It reduces the administrative burden on the State since it has already established local market rates for AFDC and Transitional Child Care. Further, we believe that since the terminology used in section 402(g) and section (i) are exactly the same, it was Congress' intent that the rates be the same. This is also supported by the conference report which agrees to follow the Senate amendment which provides that rules relating to Federal matching rates, reimbursement, standards, and fee schedules would remain the same as in current law. H.R. Rep. No. 964, 101 Cong., 2nd Session 921, as reprinted in 1990 U.S. Code Cong. and Admin. News 2374, 2626. Finally, we

continue to believe that the 75th percentile represents a reasonable definition of market rate and a reasonable balance between concerns about fiscal accountability and access to child care.

We are aware that there are a number of misunderstandings regarding our policy that the local market rate is to be set at the 75th percentile. As we are using the same definition for local market rate for At-Risk Child Care, we want to reexplain the policy. When we first considered the requirement in connection with IV–A child care, it seemed obvious that if actual cost was to be paid only up to the local market rate, the actual charged costs for some child care would be more than the local market rate. It also seemed logical that in referring to a "market rate", Congress was intending to maintain fiscal responsibility and limit payments to amounts generally charged because of competition in the marketplace. This is the common understanding of a "market rate". Thus in defining the local market rate it was necessary to develop a method for distinguishing between the amounts generally charged for child care and amounts which exceeded what was generally charged. In other words, we wanted to develop a method which would allow States to pay the amount generally charged for child care, so that most caregivers would be included, without allowing or requiring them to pay for care which was much more expensive.

In developing this method, we first considered using the average cost of child care in an area. However, the average cost, by definition, would be in the "middle" of what is charged or around the 50th percentile. Because it is in the "middle", we realized that setting the local market rate at the average cost could have eliminated many child care providers, possibly even up to half of those in an area, including many who charged only slightly more than the average cost. We did not want to restrict the supply of providers in this fashion as we wished to allow States more flexibility in who they could pay and we wished to allow parents a real choice in providers. We decided to set the "local market rate" at the 75th percentile as it would include most providers in any given area but would prevent the inefficient use of public funds by restricting payment to those providers charging the more expensive or excessive amounts. A discussion of how the 75th percentile is calculated can be found in the preamble to the final JOBS and Supportive Services regulation at 54 FR 42228–29.

States are reminded that it is a violation of Federal appropriations law to supplement above the 75th percentile with Federal funds. Such supplementation would contravene the Federal funding limits provided in the Act.

Statewide Limit

Section 402(i) of the Act does not require the State to establish a statewide limit as section 402(g)(1)(C) of the Act does for child care under the Family Support Act. We propose at § 257.63(b) to allow States to adopt a Statewide limit (or limits) for At-Risk Child Care. We believe that giving States this flexibility is consistent with Congressional intent. It give States budgetary and planning control in an optional program with limited funding. It may also allow them to provide services very similar to those provided under section 402(g).

The Statewide limit can be the same as the limit(s) established by the State for AFDC and transitional child care. It can be differentiated based on age or special needs. There actually could be as many as three Statewide limits since there could be different limits for children over age two, those under age two, and those having special needs.

We propose to have States so choosing to provide their Statewide limit(s) in the At-Risk Child Care Plan, as described at § 257.21(j).

Administrative Costs

FFP is also available for the general supervision and management of the program. It is clear from the language of the Act that the purpose of the program is to provide child care services to those families who are at risk of becoming AFDC dependent unless child care is made available, permitting the parent(s) to work. Although there is no restriction regarding the amount of funds available for administrative expenditures, there must be a correlation between the child care services payments claimed and the administrative expenditures claimed. Such administrative expenditures claimed must be reasonable and necessary expenditures of the program. It would be improper for a State to use all or most of the funds available for a project period to cover administrative expenditures. We will monitor States' performance in this area.

For child care under parts 255 and 256, the final regulations provide that FFP is not available for expenditures related to the recruitment and training of child care providers, resource development, and licensing activities. The proposed regulation at § 257.73(b) applies these restrictions for At-Risk Child Care. We believe that expenditures for these activities should not be funded through this program because funding for these activities is provided through Child Care Improvement (Licensing) grants, originally authorized by the Family Support Act of 1988, and the Child Care and Development Block Grant, authorized by OBRA 1990.

Non-supplantation (§ 257.64 of the Proposed Regulations)

Section 402(i)(5)(D) of the Act provides that amounts paid by the State IV–A agency for child care cannot "be used to supplant any other Federal or State funds used for child care services." Although there is no explanation of this provision in the legislative history, we assume that Congress intended to ensure that new Federal monies being made available for child care are not simply used to replace existing expenditures, but to increase the availability of services. We note that a similar (though not identical) provision is contained in the Child Care and Development Block Grant Act of 1990, which was passed at the same time.

Since the provision prohibits supplantation for child care services generally, a State cannot replace any current Federal or State funding for child care services with section 402(i) grant money. However, it is possible for a State to use current funding (including continuation funding) as the State match for section 402(i) care. The following example may help clarify the principle.

If a State had been spending $1 million in title XX block grant funds, $4 million in IV–A funds and $6 million in State funds ($4 million in IV–A match and $2 million in supplemental State funds) on child care services, this level of funding must continue from non-section 402(i) sources to avoid supplantation. The State could not reduce its State spending to $5 million and use $1 million to match $1 million in section 402(i) funds to achieve the previous level since that would replace State funds with section 402(i) funds in violation of the provision. However, the State could use the $2 million in current supplemental State funds as its match for the section 402(i) funds, and thus increase child care services by $2 million without having to increase State funding.

In order for the Administration For Children and Families to determine that the requirement of non-supplantation is met, the proposed regulation at § 257.64(b) requires the State to establish a dollar value for child care services for a base period. Expenditures will be compared with expenditures

during the base period to determine whether supplantation has occurred. The base period should include all Federal and State funding for child care services. The requirement is limited to public funds.

We propose to define the base period to be a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month in which the State implements the At-Risk Child Care program. For example, States which have approved interim plans that were effective October 1, 1990 must, in defining their initial base period, include the month of September 1989. Thus the State might use calendar year 1989 or their State fiscal year beginning July 1, 1989.

In determining the level of expenditures during the base periods, the State must consider Federal and State programs. Differing fiscal or program years may add to the level of difficulty in establishing an amount for the base period. However, the flexibility provided in the proposed regulations in setting the base period should accommodate this difficulty.

General Administrative Requirements (§ 257.65 of the Proposed Regulations)

OMB Circular A–102, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," is currently incorporated in the Department's regulations at 45 CFR parts 74 and 92. The child care programs subject to parts 255 and 256 are subject to the regulations at part 74. This is because they are funded under section 403 of the Act as open-ended entitlement grants. However, while there is a limitation of total funds available for Federal obligation each fiscal year for At-Risk Child Care, At-Risk Child Care is funded under the section 403 appropriation. For that reason and for administrative simplicity, we believe that At-Risk Child Care should be subject to the requirements of part 74, instead of part 92. The proposed regulation would therefore apply part 74 to the program. Consistent, however, with the regulations at § 201.5, subparts G (Matching and Cost Sharing) and I (Financial Reporting Requirements) of part 74 shall not be applicable to the program. Rather, the specific requirements of this regulation apply.

Financial Reporting (§ 257.66 of the Proposed Regulations)

The proposed regulation at § 257.66 establishes the financial reporting requirements for the program. We are proposing that estimates and expenditures for At-Risk Child Care program be reported in the same manner that estimates and expenditures for child care under parts 255 and 256 are reported. We expect to add a new section to the current financial reporting form used for expenditures made under title IV–A, the FSA–231, for estimates and expenditures for this program. Further guidance will be issued to States.

Financial reports are distinct from the annual report required by section 402(i)(6)(A)(i) of the Act. Our authority to require financial reports is found in section 1102 of the Act which permits the Secretary to establish rules that are necessary for the efficient administration of the program.

Pursuant to § 257.31, a family receiving At-Risk Child Care is required to make a contribution toward the cost of care. A contribution paid directly to the State IV–A agency which has made a full payment to the provider is considered program income. Consistent with longstanding policy, the proposed regulation at § 257.66(b) provides that State IV–A agency must use the deduction alternative at § 74.42(c) when reporting such income. Thus, such contributions will be used to offset expenditures when claiming FFP for child care services payments.

Cost Allocation (§ 257.67 of the Proposed Regulations)

The regulation proposes that in accordance with the cost allocation requirements of part 95, subpart E, a State shall amend its cost allocation plan to account for expenditures made under the At-Risk Child Care program. The regulation at § 95.519 provides that if a State has failed to submit an amended cost allocation plan, the costs claimed will be disallowed.

Disallowance Procedures (§ 257.68 of the Proposed Regulations)

FFP for expenditures claimed under At-Risk Child Care that are not made in accordance with these regulations and the State Plan will be disallowed. The proposed regulations provide that the deferral and disallowance regulations at § 201.15 are applicable to the At-Risk Child Care. Moreover, we propose that the procedures for the taking of disallowances and the managing of appeals applicable to the AFDC program and child care programs at parts 255 and 256, be applicable to this program. This is consistent with our intent to administer these programs in a similar manner.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION AND TRAINING

Applicable Standards (§ 255.4(c)(2) of the Proposed Regulations)

We propose to amend § 255.4(c)(2) to clarify that applicable standards of State and local law are standards which are generally applicable to care of a particular type in the State or local jurisdiction regardless of the source of payment for the care.

Background

Under the Family Support Act of 1988, States must guarantee child care to AFDC families when needed for employment or to enable participation in approved education and training activities (including participation in JOBS). This provision was effective in each State on the date of JOBS implementation, but not later than October 1, 1990. Effective April 1, 1990, States also have to guarantee child care for up to 12 months for former AFDC recipients who lose AFDC eligibility for an employment-related reason and need child care to accept or maintain employment. Final regulations implementing these provisions were published October 13, 1989. (54 FR 42146) Section 255.4(c)(2), which provides that child care must meet applicable standards of State and local law, applies to all child care provided under the Family Support Act.

A key principle guiding the Administration For Children and Families in writing those regulations was the concept of "parental choice." It is first articulated in the introductory section on the "Objectives of the Family Support Act and These Regulations" at 54 FR 42149 where we said "That consistent with individual responsibility is choice, and * * * parents (should) be given a wide range of options for child care while participating in the program." We further said in the preamble at 54 FR 42225 that "parents should be able to make informed choices about who provides care for their children." The regulations at § § 255.3(c) and 255.3(d) reflected this principle by allowing the caretaker relative to choose the type of child care (center, group family day care, family day care, or in-home care), if more than one type is available, and by requiring the State to have at least one payment mechanism by which self-arranged child care could be paid.

We believe that "parental choice" must be a paramount consideration. It is crucial for JOBS participants because

they may be required by the IV–A agency to leave their children in child care arrangements while they attend mandatory work and training activities. But it is also important in protecting the guaranteed nature of transitional child care benefits. Employed families could well lose access to child care services of their choice and the guarantee would be substantially reduced if special standards were allowed. Furthermore, it would be antithetical to our overall goal of supporting the family in its quest for independence and self-sufficiency to interfere in so personal and critical a decision as who will take care of one's children while one must be away from them.

Applicable Standards

Section 402(g)(3)(B)(ii) of the Social Security Act limits federal financial participation (FFP) for child care provided to eligible AFDC recipients and former AFDC recipients to child care which meets "applicable standards of State and local law." This provision is contained in the final regulations at § 255.4(c)(2) which also included "Tribal law, where applicable." Questions have arisen about the meaning of this provision; the purpose of the proposed regulation is to clarify the meaning of applicable standards.

Child care for which there are no applicable standards, i.e., no licensing or regulatory requirements set by the State or locality that specifically regulates child care, is legal care. Under the Family Support Act, such care is available for use by AFDC recipients and former recipients eligible for transitional child care. For example, if a State does not regulate family day care providers caring for less than three children, such care is legal, and, if the caretaker relative selects that provider, the State must pay for the care. In addition, if a provider is exempt from child care licensing requirements for reasons other than the source of payment, e.g., a sectarian child care center, such care would be legal because there are no applicable standards. Child care for which there are no standards will not be affected by this proposed regulation.

In addition, child care standards that are generally applicable are unaffected by this proposed regulation. Child care provided under section 402(g) has always been subject to any standard which is mandated in any law or regulation of the State or locality which generally applies to care of the same type in the State or locality, e.g., center care, group family day care, family day care, and in-home care. For example, we know that all States have child care licensure laws that include standards which address health and safety conditions and other aspects of care provided at child care centers. Since these are standards that have general applicability, they apply to title IV–A child care.

However, some States impose child care standards and regulations on publicly-funded child care that are not applicable to privately purchased care. The question has arisen whether, under title IV–A, a State may deny payment for child care which violates no general child care requirements in the State, but which does not meet an additional set of requirements which apply only to publicly-funded care. The proposed regulation at § 255.4(c)(2) precludes this. For child care funded under title IV–A, applicable standards include only those that are generally applicable to care of a particular type. A State may not set separate standards which apply only to title IV–A subsidized care. If a State has standards which affect only publicly-funded care, and a caregiver of that type of care does not meet them, for title IV–A purposes that care is still "legal," and the State must still pay for that care.

While we recognize that some States will be concerned that our proposed regulation will affect their role as stewards of public funds and their ability to protect children in publicly-funded child care, we believe that this impact is limited for the following reasons:

(1) Child care provided under section 402(g) has always been subject to any standard which is mandated in general law or regulation for child care of a particular type. A State which currently has health and safety standards that apply only to publicly-funded care could extend such standards to protect all children. Funding to assist States to do so is available through the licensing and monitoring grant under section 402(g)(6) of the Act and the Child Care and Development Block Grant Act of 1990.

(2) The proposed regulation does not require States to develop standards nor does it require that standards that States do have be uniform across all types of care.

(3) States have been paying for care, including informal care, that does not meet State standards for publicly-funded care, for years through the AFDC disregard.

(Catalog of Federal Domestic Assistance Programs; 93.021 Job Opportunities and Basic Skills Training, 93.036 At-Risk Child Care)

List of Subjects in 45 CFR

Part 255

Aid to Families with Dependent Children, Grant programs—social programs, Employment, education and training, Day care.

Part 257

Day care, Grant programs—social programs, reporting and recordkeeping requirements.

Dated: April 12, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: April 25, 1991.

Louis W. Sullivan, M.D.,

Secretary, Department of Health and Human Services.

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

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. The authority citation for part 255 continues to read as follows:

Authority: Secs. 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

2. Section 255.4 is amended by revising paragraph (c)(2) to read as follows:

§ 255.4 Allowable costs and matching rates.

* * * * *

(c) * * *

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable. Applicable standards are licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation regardless of the source of payment for the care.

* * * * *

3. A new part 257 is added to read as follows:

PART 257—AT-RISK CHILD CARE PROGRAM

Sec.

Sec.

Authority: Secs. 402, 403, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, and 1302).

§ 257.0 Purpose.

This part pertains to the At-Risk Child Care program which permits States to provide assistance to low-income working families who need child care in order to work and are otherwise at risk of becoming eligible for AFDC.

§ 257.10 State IV-A agency administration.

(a) The State agency responsible for administering or supervising the State's title IV–A Plan is responsible for administering the At-Risk Child Care program.

(b) The following functions must be performed by the State IV–A agency:

(1) Planning for and design of the At-Risk Child Care program, including submission of the State Plan to the Secretary;

(2) Establishing eligibility criteria;

(3) Setting local market rates and the sliding fee scale;

(4) Issuing policies, rules, and regulations governing the program;

(5) Submitting reports required by the Secretary as specified at § 257.50;

(6) Submitting quarterly estimates and expenditure reports pursuant to § 257.61; and

(7) Submitting Standard Form LLL (SF–LLL) which assures that funds will not be used for political lobbying purposes, pursuant to Part 93 of this title, prior to the beginning of each fiscal year.

(c) Except for functions described in paragraph (b) of this section, the State IV–A agency may carry out the At-Risk Child Care program through arrangements or under contracts with other State or local administrative entities, or other public or private organizations.

(1) In doing so, the entity or organization must follow the policies, rules, and regulations of the State IV–A agency and must not have the authority to review, change, or disapprove any State IV–A agency administrative decision. Neither shall the entity or organization substitute its judgment for that of the State IV–A agency in the application of policies, rules and regulations promulgated by the State IV–A agency.

(2) Other entities or organizations may determine individual eligibility for the At-Risk Child Care program in accordance with rules established by the State IV–A agency.

§ 257.20 Requirement for a State At-Risk Child Care Plan.

(a) The State IV–A agency must submit the At-Risk Child Care Plan to the Secretary for approval.

(b)(1) The At-Risk Child Care Plan shall be submitted as an amendment to the State Supportive Services Plan which is defined at § 255.1.

(2) An At-Risk Child Care Plan may be submitted at any time during the quarter in which the State intends it to be effective. Upon its approval, the plan will be effective not earlier than the first day of the calendar quarter in which it is submitted.

(3) A State shall be entitled to its maximum grant, as defined at § 257.60(c), for any fiscal year in which it has an approved At-Risk Child Care Plan; however, it may not claim expenditures for any period prior to the effective date of the State Plan.

(c)(1) States operating an At-Risk Child Care program under an interim application approved prior to the issuance of At-Risk Child Care preprints shall submit a new At-Risk Child Care plan as an amendment to its Supportive Services Plan to the Secretary for approval after issuance of the preprint.

(2) The amendment required under paragraph (c)(1) of this section must be submitted in the quarter following the quarter in which the preprint is issued, to be effective not earlier than the first date of the calendar quarter in which it is submitted.

(3) A State with an approved interim application with a start date of October 1, 1990 may claim for expenditures for the period beginning October 1, 1990.

(d) A State that submits a plan to provide for At-Risk Child Care that is not approvable will be given the opportunity to make revisions before final disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213 of this chapter.

§ 257.21 State plan content.

A State's At-Risk Child Care plan must include the following:

(a) Assurances that:

(1) The State IV–A agency will, upon approval of the plan, administer the At-Risk Child Care Program in accordance with the requirements of sections 402(i) and 403(n) of the Act and the regulations under this part;

(2) Child care meets applicable standards of State and local law in accordance with § 257.41;

(3) All child care providers, except those giving care solely to members of their family, are licensed, regulated, or registered by the State or locality in which the care is provided in accordance with § 257.41;

(4) Any provider of child care must allow parental access, in accordance with § 257.41;

(5) Amounts expended by the State for child care under section 403(n) of the Act do not supplant any other Federal or State funds used for child care services;

(6) Child care provided or claimed for reimbursement is reasonably related to the hours of employment;

(7) Individuals are not discriminated against on the basis of race, sex, national origin, religion, or handicapping condition in access to the At-Risk Child Care program.

(b) Definitions of the following terms:

(1) At-Risk of being eligible for AFDC;

(2) Low income, as it will be used to determine eligibility for the program; and

(c) Any other eligibility criteria that the State adopts, pursuant to § 257.30;

(d) A description of the State's priorities for providing At-Risk Child Care;

(e) A description of the administrative structure, including what entity determines eligibility, as provided in § 257.10;

(f) If not provided statewide, a list of political subdivisions where the At-Risk Child Care program is offered;

(g) Methods the State agency will use to provide child care in accordance with § 257.40;

(h) A description of the State's registration process for unlicensed and uncertified providers including time frames for payment, in accordance with § 257.41(b);

(i) Local market rates, in accordance with § 257.63(a) and § 255.4(a) of this chapter;

(j) The statewide limit(s), if any, in accordance with § 257.63(b);

(k) The sliding fee scale under which families will contribute to the cost of care, in accordance with § 257.31. This includes the income rules used to calculate the family's contribution to the cost of care, in accordance with § 257.31;

(l) A description of the State's policy on providing child care during gaps in employment, in accordance with § 257.30(c);

(m) A description of coordination of At-Risk Child Care with existing IV–A child care programs, with other

Federally-funded child care programs, and with child care provided through other State, public, and private agencies; and

(n) The base period and the amount established for the base period, as provided in § 257.64.

§ 257.30 Eligibility.

(a) A family is eligible for child care under this part provided the family:

(1) Is low income, as defined in the approved State At-Risk Child Care Plan;

(2) Is not receiving AFDC;

(3) Is at risk of becoming eligible for AFDC, as defined in the approved At-Risk Child Care Plan;

(4) Needs such child care in order to accept employment or remain employed; and

(5) Meets such other conditions as the State may describe in its approved At-Risk Child Care Plan.

(b) The State may provide child care for any child in the family who needs such care and who:

(1) Is under age 13; or

(2) Is under age 18 (or under age 19, if the State so provides in its definition of dependent child in its State IV–A plan), and

(i) Is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or

(ii) Is under court supervision.

(c) A State IV–A agency may provide child care if child care arrangements would otherwise be lost:

(1) For up to two weeks prior to the start of employment; or

(2) For up to one month during a break in employment if subsequent employment is scheduled to begin within that period.

§ 257.31 Fee requirement.

(a) The State IV–A agency must require each family receiving At-Risk Child Care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV–A agency shall establish a sliding fee scale which will provide for some level of contribution by all recipients.

(c) The State IV–A agency may vary the period of collection for different fee levels.

(d) The State IV–A agency may establish whether fees are paid to the providers or to the State agency.

§ 257.40 Methods of providing child care.

(a) A State may use any of the following methods:

(1) Providing the care directly;

(2) Arranging the care through public or private providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative so that the child care costs may be prepaid;

(4) Reimbursing the caretaker relative for child care expenses incurred; or

(5) Adopting such other arrangements as the agency deems appropriate, including certificates.

(b) If more than one type of child care is available, e.g., center, group family care or family day care, the caretaker relative must be provided an opportunity to choose the arrangement.

(c)(1) The State IV–A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV–A agency must establish at least one method by which self-arranged child care can be paid.

(d) The State IV–A agency must coordinate its child care activities under this part with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

§ 257.41 Child care standards.

(a)(1) Child care provided with funds under this part must meet applicable standards of State and local law, and/or Tribal law.

(2) Applicable standards are licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care.

(b)(1) All providers of care who are not required to meet applicable standards as provided in paragraph (a) of this section and who are not individuals providing care solely to members of the individual's family, must be registered by the State or locality in which the care is provided prior to receiving payment.

(2) Registration procedures must:

(i) Collect only such information about providers required to register, pursuant to paragraph (b)(1) of this section as is necessary for the State to make payment to the provider or furnish information to the provider;

(ii) Facilitate appropriate and prompt payments;

(iii) Allow providers to register with the State or locality after selection by the parent(s);

(iv) Be simple and timely;

(v) Not exclude or have the effect of excluding any categories of child care providers.

(c) Child care providers receiving At-Risk Child Care funding must afford parents unlimited access to their children, including written records concerning their children, and to providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 257.50 Reporting requirements.

(a) Beginning with FY 1993, the State IV–A agency shall prepare and submit an annual report to the Secretary that contains the following:

(1) The number of children receiving services and the average cost of such services separately by type of care, including center-based, group home, family, and relative care;

(2) The child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of care; and

(3) The enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

(b) The State IV–A agency shall submit its report to the Secretary no later than 90 days after the end of the federal fiscal year.

(c) The State IV–A agency shall make the report available for public inspection within the State and shall provide a copy of each report, on request, to any interested public agency.

§ 257.60 Availability of funding.

(a) A State agency is entitled to payments if it has an approved State At-Risk Child Care Plan. The payments are available only for the allowable expenditures of the program.

(b)(1) A State's limitation, i.e., share, from the national total of available funds for a fiscal year is based on the same ratio as the number of children under 13 residing in the State is to the national total of children under 13.

(2) The number of children under 13 for the States is derived from the best data available to the Secretary for the second preceding fiscal year, or for the Territories, the best data available for the closest fiscal year prior to the second fiscal year.

(c) The difference between the amount not paid to a State in a fiscal year and the State's limitation as described in paragraph (b) of this section for that same fiscal year may be added to a State's limitation for the

following fiscal year. The total amount available in a fiscal year is referred to as a State's maximum grant for that year.

(d) For American Samoa, Guam, Puerto Rico, and the Virgin Islands, funding under this part is subject to the funding restrictions established under Section 1108 of the Social Security Act.

§ 257.61 Grant awards.

(a) States are required to submit estimates and report expenditures on a quarterly basis. Adjustments in subsequent quarters' grant awards will be made to reflect over- and under-estimates in prior quarters' expenditures.

(b) The total amount paid to a State in a fiscal year may not exceed the State's limitation or maximum grant for the fiscal year, whichever is appropriate.

(c) The regulations pertaining to State estimates and expenditures at § 201.5 of this chapter and the timely filing of claims at part 95, subpart A of this title apply to expenditures under this part.

§ 257.62 Matching requirements.

(a) Payments for child care services provided under this part and for the costs of administering them are available at the Federal Medical Assistance Percentage (FMAP) rate.

(b) Expenditures for the program will be matched at the FMAP rate applicable for the fiscal year in which expenditures are made.

(c) A State's share of expenditures must be in cash and may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds:

(i) Are transferred to the State or local agency and under its administrative control;

(ii) Are donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions; and

(iii) Do not revert to the donor's facility or use either directly or indirectly.

(3) An amount equal to any funds received which do not meet the conditions of paragraphs (c) (1) and (2) of this section must be deducted from the State's expenditure claims subject to Federal matching.

(4) Third-party in-kind contributions may not be used.

(d) For American Samoa, Guam, and the Virgin Islands, the matching requirement for the first $200,000 in expenditures made in a fiscal year is waived.

§ 257.63 Allowable expenditures.

(a) FFP is available for the actual cost of child care, but not for more than the applicable local market rate.

(1) The applicable local market rate must be determined in accordance with the provisions of § 255.4 (a)(2) and (a)(3) of this chapter.

(b) The State agency may establish a statewide limit.

(1) The statewide limit may be the same as the statewide limits established at § 255.4(a)(1) of this chapter or may be a higher or lower amount;

(2) The State may specify a higher statewide limit for children with special needs.

(c) FFP is available for expenditures made in administering the provision of child care services under this part. FFP is not available for costs associated with the recruitment or training of child care providers, resource development, or licensing activities.

§ 257.64 Non-supplantation.

(a) Amounts expended by the State IV–A agency for child care under this Part shall not be used to supplant any other Federal or State funds used for child care services.

(b)(1) The State must determine the total amount of Federal and State funds expended during a base period (as defined in paragraph (b)(2) of this section) for child care services. States must assure that the amount of funding from other sources is maintained at the amount established for the base period.

(2) The base period will be a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month in which the State implements the At-Risk Child Care program.

(3) The amount established for the base period will be included in the State's At-Risk Child Care Plan.

§ 257.65 General administrative requirements.

The provisions of part 74 of this title (with the exception of subpart G, Matching and Cost Sharing, and subpart I, Financial Reporting Requirement) establishing uniform administrative requirements and cost principles shall apply to this program.

§ 257.66 Financial reporting.

(a) State estimates and expenditures will be reported on the financial reporting form for expenditures made under title IV–A.

(b) Contributions made by families for the cost of care where the State has made a full payment to the provider will be reported as program income and will be used to offset expenditures claimed as child care services payments. The requirements at § 74.42(c), subpart F of this title apply.

§ 257.67 Cost allocation.

A State agency shall amend its cost allocation plan to include the costs of the program, in accordance with the regulations at part 95, subpart E of this title.

§ 257.68 Disallowance procedures.

(a) Expenditures under this plan that do not meet the requirements of this part or the State At-Risk Child Care Plan are unallowable.

(b) The deferral and disallowances regulations of § 201.15 shall apply to this program. If the State IV–A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV–A procedures, including review of the Departmental Appeals Board, in accordance with part 16 of this title.

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Part VI

Postal Service

39 CFR Part 111

Zip+4 and Zip+4 Barcoded Rate Presort Requirements; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Zip+4 and Zip+4 Barcoded Rate Presort Requirements

AGENCY: Postal Service.

ACTION: Proposed rule; solicitation of suggestions.

SUMMARY: This proposal would amend the Domestic Mail Manual (DMM), with a proposed effective date of September 20, 1992, to require that nonbarcoded mailpieces within Zip+4 Barcoded rate mailings maintain a barcode clear zone.

This proposal would also amend the DMM, with a proposed effective date of September 15, 1991, to correct an error in the terminology used to describe the required relationship between the reflectance of the background of the mailpiece and the reflectance of the ink in the barcode.

This proposal would amend the weight requirements for automation-based rate mailings to provide that the maximum weight limit for any mailpiece within a Zip+4 barcoded rate mailing will remain at the current 3.0 ounces.

This proposal would also amend existing Zip+4 rate sortation requirements in DMM chapter 5 and, add new sortation options for ZIP+4 Barcoded rate categories to DMM chapter 5. If adopted, the new sortation options would become effective upon publication of a final rule, expected to be no later than September 15, 1991.

In addition, the Postal Service seeks preliminary comments on its plan to make the sortation options in DMM chapter 5 mandatory for all automation-based rate mailings of letter-size pieces effective in March 1992. Under this plan, current sortation requirements in DMM sections 364, 365, and 366, for First-Class Mail; 424.5, 424.6, and 447, for second-class mail; and 628 and 647 for third-class mail, would be eliminated. Only the sortation options in chapter 5, as currently stated and as proposed in this rulemaking, could be used to qualify for presorted Zip+4 and Zip+4 Barcoded rates.

The Postal Service anticipates that mailers will need some time to make such a transition. Accordingly, in addition to comments on the proposed preparation requirements in chapter 5, the Postal Service hereby requests mailers to provide comments on the concept of eliminating the current automation-compatible mail provisions in chapters 3, 4, and 6, and to provide information regarding the length of transition time they would need to change their mailing operations to meet the requirements of the chapter 5 preparation options. The Postal Service will use this information in formulating a possible future proposed rule to make chapter 5 preparation options the only permissible sortation options for obtaining presorted Zip+4 Barcoded rates.

DATES: Comments must be received on or before August 9, 1991.

ADDRESSES: All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza, SW., Washington, DC 20260–5903. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Arvonio (202) 268–5164, or Mrs. Lynn M. Martin (202) 268–5176, for information concerning the chapter 5 preparation requirements and the maximum weight requirements for Zip+4 Barcoded rate mailings.

Ms. Evelyn Stein, (202) 268–5175, for information concerning the proposed changes to the barcode clear zone requirements and the print contrast/print reflectance difference requirements.

SUPPLEMENTARY INFORMATION: .

A. Barcode Clear Zone Reflectance Requirements for Non-Barcoded Pieces in ZIP+4 Barcoded Rate Mailings

In order to process large volumes of mail quickly and accurately the Postal Service must be able to apply barcodes to nonbarcoded letter-size mail. The mailpiece must provide a relatively clear zone for barcode application (i.e., one that meets certain reflectance requirements) for the barcode to be clearly distinguishable from the background upon which it is printed. DMM section 551.4 establishes "barcode clear zone" reflectance criteria for ZIP+4 Barcode rate mail and for all mail included in ZIP+4 mailings.

Current regulations do not require nonbarcoded mailpieces (pieces not bearing a ZIP+4 or delivery point barcode) that are included in a ZIP+4 Barcoded rate mailing to have a clear zone meeting the reflectance requirements of DMM 551.4. However, a clear zone meeting these reflectance criteria on nonbarcoded pieces is necessary to allow the Postal Service to apply a ZIP+4 barcode wherever possible to mailpieces that the mailer was unable to barcode with a ZIP+4 or delivery point barcode, but which have been included as part of an automation-based rate mailing. Adding this requirement for nonbarcoded pieces in mailings barcoded in either the lower right corner or in the address block will provide the USPS an opportunity to automate the sortation of all letter-size mail which has been entered into the automated mailstream as part of a barcoded rate mailing, thereby enhancing the Postal Service's ability to process increased volumes on the more efficient automated equipment.

Accordingly, the Postal Service proposes to require that all nonbarcoded mailpieces in any barcoded mailing have a barcode clear zone that produces a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum, as specified by DMM 551.4, and that meets the opacity, dark fiber, and background pattern criteria of 551.4.

Under this proposed change, mailers who barcode in the address block must either maintain a clear zone in the lower right portion of the envelope of non-barcoded pieces or present those non-barcoded pieces in a separate, non-automation-compatible mailing.

To allow the mailing industry time to use up existing supplies of paper or envelope stock, and to plan for the change, the Postal Service proposes to delay implementation of this requirement, if adopted, until September 20, 1992. Comments are invited on both the time frame and the proposed regulation itself.

B. Required Relationship Between the Reflectance of the Background of the Mailpiece and the Reflectance of the Ink in the Barcode

In the final rule on Eligibility Requirements for Automated Rate Categories (56 FR 2598) published January 23, 1991, the term "print contrast ratio" (PCR) was incorrectly used in DMM 551.42. The proper term is "print reflectance difference" (PRD). Since USPS barcode reader electronics use a direct measurement of ink and background, the print reflectance difference is a more relevant measurement of the information evaluated for barcode scanning. Print reflectance difference is the reflectance of the background of the mailpiece minus the reflectance of the ink used to print the barcode on the mailpiece. This result is multiplied by 100 and is expressed as a percentage. A print reflectance difference of 30 percent is necessary for successful processing of barcoded mail on USPS barcode sorting equipment. Unlike USPS OCR electronics, barcode sorters do not perform a thresholding function to

compensate for background reflectance and, therefore, the print contrast ratio requirement is not appropriate for barcodes, but only addresses.

Accordingly, the Postal Service proposes to correct this error in terminology effective September 15, 1991, to change the PCR requirement of 30 percent in current DMM 551.42 to a requirement for a 30 percent "print reflectance difference." It is anticipated that correction of this error in terminology will not have a significant impact on mailers' ability to qualify for automation rates, although some adjustment may be required. This proposed change restores the correct term ("print reflectance difference") that had appeared in the DMM prior to February 24, 1991. Until September 15, either a PCR or a PRD of 30 percent will be accepted.

C. Relaxing the 2.5-Ounce Maximum Weight Requirement for ZIP+4 Barcoded Rate Mailings

In order to encourage more mailers to prepare ZIP+4 Barcoded rate mail, and thereby allow the Postal Service to achieve the cost savings and efficiencies associated with processing customer barcoded mailings, the Postal Service proposes to allow mailers to continue to include mailpieces that weigh up to 3.0 ounces within ZIP+4 Barcoded rate mailings.

An evaluation of the Postal Service's earlier decision to impose a 2.5 ounce weight limit on all automation-based rate mailings has established that a distinction should be made between mail prepared for processing On Optical Character Reading (OCR) equipment and ZIP+4 barcoded mail ready for immediate processing on barcode sorters. Mail which is prebarcoded bypasses the OCR, which can eliminate a step in processing thereby making the lower throughput associated with heavier pieces less of a problem.

A similar change is not being proposed to the ZIP+4 rate weight requirements because ZIP+4 mail must still undergo this two-step sortation process. Therefore the maximum weight for pieces in ZIP+4 rate mailings will be reduced to 2.5 ounces on September 15, 1991, as provided in DMM 521.3.

D. Revisions to Chapter 5 Sortation Requirements

Some mailers have advised the Postal Service that they are unable to prepare mailings at the ZIP+4 Barcoded rates because of the current requirement to document pieces by the type of tray or sack in which they are placed. These requirements are necessary under the current preparation requirements because different presort levels of tray or sack qualify for different rates. This documentation is necessary to allow the Postal Service to verify the mailer's preparation of the mail and, therefore, its eligibility for the rates claimed. However, many mailers are apparently unable to take advantage of ZIP+4 Barcoded rates because their mailing operations do not allow them either to predict the level of tray or sack into which the piece or package will be placed, or to efficiently determine this information following mail preparation. This appears to be a particular problem for mailers using multi-line OCRs to barcode and sort a wide mix of mailpieces having different sizes and weights. Other mailers have indicated that they are unwilling to convert to chapter 5 tray-based preparation because if they choose to prepare ZIP+4 Barcoded mail under the current requirements in chapter 5, they will not qualify as many pieces for the 5-digit and 3-digit ZIP+4 Barcoded rates as they could under the current presort options available in DMM chapters 3, 4, and 6. For example, in a third-class 5-digit ZIP+4 Barcoded rate mailing prepared in sacks as described in DMM 628, as few as 125 pieces in a 5-digit sack are eligible for 5-digit level rates, as well as 5-digit packages in 3-digit sacks of 125 or more pieces. By contrast, in a mailing of any class prepared in accordance with current DMM 563, a full tray of mail is required to qualify barcoded pieces for the 5-digit ZIP+4 Barcoded rates. Similarly, First-Class sortation in DMM 364.1 allows ZIP+4 barcoded pieces in packages containing as few as 10 pieces to a 5-digit ZIP Code area to qualify for the 5-digit ZIP+4 Barcoded rate when placed within 5-digit, unique 3-digit, and SCF trays, whereas a full tray of mail to the 5-digit area is required by DMM 563 in order to qualify ZIP+4 barcoded pieces for the 5-digit ZIP+4 Barcoded rates.

In response to this situation and particularly in light of the Postal Service's future intent to eliminate the ZIP+4 and ZIP+4 Barcoded rate sortation options in DMM chapters 3, 4, and 6 (as noted in subsection E below), the Postal Service is proposing to add new alternative package-based preparation options to the DMM as sections 563.2, 563.3, and 563.4. The 5-digit mailing option in 563.2 would allow mailers to qualify for 5-digit ZIP+4 Barcoded rates where there are 10 or more ZIP+4 barcoded pieces for a 5-digit ZIP Code area provided all pieces (100%) in the mailing bear a ZIP+4 barcode or delivery point barcode. Pieces in groups of 10 or more for 5-digit areas will be eligible for the 5-digit ZIP+4 Barcoded rate regardless of the level of presort of the tray in which they are placed. Only full 5-digit, full 3-digit, and SCF trays of any volume will be permitted in 5-digit ZIP+4 Barcoded rate mailings.

Similarly, in 3-digit Barcoded rate mailings prepared under § 563.3 barcoded pieces within groups of 50 or more pieces to the same 3-digit ZIP Code area will qualify for the 3-digit ZIP+4 Barcoded rate. Full three-digit trays and SCF trays as well as less than full SCF trays may be prepared.

New section 563.4 will provide an option for combining mail prepared under 563.2 and mail prepared under 563.3 into a single mailing.

These new sortation options should help more mailers qualify for the ZIP+4 Barcoded rates under chapter 5 provisions. Furthermore, since qualification for the rate levels is not dependent upon the level of tray in which a piece is placed, the documentation required to accompany 3-digit Barcoded rate mailings need not show the level of tray or the number of pieces in a tray. (No documentation is required for 5-digit ZIP+4 Barcoded rate mailings since 100 percent of the pieces in the mailing must be ZIP+4 barcoded or delivery point barcoded.) This change should alleviate the documentation problems experienced by first- and third-class mailers under current chapters 3 and 6 preparation as well as under the current chapter 5 preparation.

The current ZIP+4 rate preparation requirements in chapter 5 will also be revised to allow more pieces to qualify for the presorted ZIP+4 rates. Although the ZIP+4 rate preparation requirements in chapter 5 will remain tray-based, less than full SCF trays will be permitted for all three classes of mail (previously this was allowed for second-class mail only). The mail within the less-than-full SCF trays must be packaged and labeled. This will allow third-class mailers to prepare such mailings in one mailstream (the current chapter 5 regulations require pieces not filling trays to be submitted as a separate mailing), as well as allow more pieces of first- and third-class to qualify for presorted ZIP+4 rates. As explained in part E below, the adoption of consolidated presortation requirements is not being extended to the ZIP+4 rate preparation portion of chapter 5 at this time.

The existing tray-based method of preparing ZIP+4 Barcoded rate mail under DMM 563 (renumbered in this proposed rule as 563.1) will remain with some changes described later in this summary.

The following specific changes are proposed to chapter 5:

(1) Current DMM 561 is amended to provide for a new subsection that explains the various options that mailers have to prepare presorted ZIP+4 and ZIP+4 Barcoded rate mailings. Specifically, it explains that, in addition to chapters 3, 4, and 6 sortation, there is one tray-based ZIP+4 option in 562, and both a tray-based (563.1) and package-based sortation options (563.2 through 563.4) for ZIP+4 Barcoded rate mailings.

(2) The definition of what constitutes a full tray is clarified for all chapter 5 sortation options from "3/4 full of mail when its contents are reasonably compressed" to "3/4 full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight." This will eliminate the possibility of inconsistent interpretations of the term "reasonably compressed" as well as any need to further define procedures for verifying it.

(3) The current requirement in chapter 5 that use of trays is mandatory for all classes of mail is extended to the new sortation options. Trays are the most effective container to maintain the automation compatibility of the mail. As explained in subsection E of this proposal, the completion of chapter 5 requirements will also result in the elimination of existing preparation rules in chapters 3, 4, and 6 for automation-based rate mailings. Through that process it will become a requirement that trays be used exclusively for ZIP+4 and ZIP+4 Barcoded rate mailings, and the use of sacks for second- and third-class mailings at those rates will be eliminated.

(4) The current requirement in chapter 5 for sleeving and banding trays that travel beyond the office of mailing is extended to the new sortation options. Unsleeved trays run the risk of having their contents fall out of the trays during transportation and handling within the postal system. To ensure that the trays and their contents remain intact during transportation, sleeves that are banded with a plastic strap at least once around the length of the tray are necessary.

(5) A requirement to face all the mail in the same direction within trays is added to all chapter 5 sortation options. This is a basic requirement for all presort categories of mail that is being restated in chapter 5. Having mail faced in the same direction is necessary for processing pieces on automated equipment.

(6) The current tray-based presorted ZIP+4 rate preparation requirements in DMM 562 are replaced with new tray-based regulations that:

(a) Allow less than full SCF trays to qualify for First-Class ZIP+4 Presort rates and second- and third-class basic ZIP+4 rates. For First-Class Mailings, there must be at least 50 pieces per 3-digit area in SCF trays. There is no minimum number of pieces in SCF trays for second- and third-class mail. Allowing less than full SCF trays will allow mailers to qualify all ZIP+4 coded pieces in a mailing for a ZIP+4 rate, and allow mailers of third-class matter to avoid having to prepare pieces that could not be placed in full trays as a separate mailing. (Second-class mailers can currently prepare less than full SCF trays.)

(b) Add a requirement to prepare pieces in less-than-full SCF trays in 3-digit packages that are labeled. Packages must be prepared with rubber bands. Packaging of pieces in less-than-full trays is necessary to maintain the orientation of the pieces in the trays. Labeling the packages gives the Postal Service additional flexibility when determining the best way to process the pieces in a tray.

(c) Revise the regulations for overflow trays to show that they pertain only to 5-digit and 3-digit trays, and that the required packages in these less-than-full trays must be labeled. Since SCF trays may now be less than full there is no need for regulations governing overflow SCF trays. The current regulations already require that pieces in less-than-full overflow trays be packaged. The requirement to label the packages is added to give the Postal Service additional flexibility when determining the best way to process the pieces in the tray. These packages must also be prepared with rubber bands.

(d) Clarify that documentation must separately show the number of pieces in 3-digit trays and the number of pieces in SCF trays. This requirement is needed because different second- and third-class ZIP+4 rates apply to mail in 3-digit trays than apply to mail in SCF trays.

(e) Add a requirement to include First-Class residual mail in the required documentation. This is necessary to establish that mailers have met the 85 percent ZIP+4 code requirement for the entire mailing and to determine what additional postage is owed the Postal Service for the residual pieces.

(f) Add a requirement to place mail in First-Class residual trays in 3-digit ZIP Code sequence to facilitate verification against the required documentation. A requirement is also added to package pieces in less-than-full residual trays by 3-digit ZIP Code area and to label the packages. The packaging is necessary to maintain the orientation of the pieces in the trays. The packages must be secured with rubber bands. Labeling the packages gives the Postal Service more flexibility when determining the best way to process the pieces in the tray. An alternative method of preparing residual is described in 6-g below.

(g) Add a new physical separation method of preparing and documenting residual mail as an alternative option for mailers who cannot sequence residual mail by 3-digit ZIP Code area as described above. Under this option, ZIP+4 coded mail pieces are place in separate trays from those that are not ZIP+4 coded. The pieces in all residual trays must be further separated into groups of 100 pieces. The counts from these trays must be included in the summary portion of the documentation.

(h) Clarify tray label requirements. The requirements for labeling 3-digit trays are made consistent with the new sections in 560. The proposed regulations also specify that trays of all classes of mail must show the name of the mailer and the mailer location on Line 3 of the tray label, rather than the post office of origin. The descriptive prefix "FR" (meaning "from") that appears in front of the name of the mailer is omitted. With new destination rates and use of the plant-verified drop shipment procedures by mailers, the name of the mailer and the mailer location are more descriptive of where the mail originated.

(i) Add a statement clarifying that only standard size 2-foot trays may be used to prepare presorted ZIP+4 mail.

(7) The current tray-based Zip+4 barcoded regulations are renumbered in section 563.1, and are amended as follows:

(a) A requirement that pieces in 5-digit trays be 100 percent Zip+4 or delivery point barcoded is added. When processed at General Mail Facilities (GMFs), mail presorted to 5-digit levels is run on the barcode sorters as one of the last steps in processing the mail. Therefore, non-Zip+4 barcoded pieces rejected by barcode sorters when running 5-digit mail will not be identified until late in the processing windows, generally too late to allow a run of the rejects on an OCR (to add a barcode) and re-run them through the barcode sorters and still meet delivery service schedules. Furthermore, to reduce facilities costs and to increase processing efficiency, the Postal Service is beginning to deploy barcode sorers which will sort 5-digit presorted mail at Associate Offices and delivery offices that are non-OCR sites. Non-barcoded

mail rejected by barcode sorter at these locations will either have to be worked manually, or rerouted back to the SCF or GMF for further processing through OCRs or MPLSMs, at additional expense to the Postal Service. In the latter case service delays will also result. For these reasons, the Postal Service does not believe it is operationally sound to continue to accept up to 15 percent non-Zip+4 barcoded or non-delivery point barcoded pieces sorted to 5-digit levels as part of a barcoded rate mailing. Although extra processing will also ensue when mail presorted to 3-digit levels is rejected by barcode sorters, these pieces are identified earlier in the processing system and in time to be rerun through OCRs or MPLSMs and still meet service standards. Furthermore, these pieces will generally be processed at GMFs or SCFs. Accordingly, although mailers and the Postal Service would benefit if all mailer barcoded mailings were required to be 100 % Zip+4 barcoded or delivery point barcoded, at the present time the Postal Service proposes to impose this requirement only on mail qualifying for 5-digit Zip+4 barcoded rates.

(b) A requirement to label packaged mail in overflow trays is added. These trays are less than full by definition, and the pieces in these trays are currently required to be packaged to maintain their orientation. The added requirement to label the packages will give the Postal Service additional flexibility when determining the best way to process the pieces in the tray. The packages must be prepared with rubber bands.

(c) A requirement is added to document residual mail. This is needed to determine that the 85% barcoded piece requirement for the entire mailing has been met and to determine the proper postage owed the Postal Service for the residual pieces.

(d) A requirement is added to place mail in residual trays in 3-digit Zip Code sequence to facilitate verification to package and lable pieces in less-than-full residual trays. The packages must be prepared with rubber bands. The packaging is necessary to maintain the orientation of the pieces in the trays. Labeling the packages gives the Postal Service more flexibility when determining the best way to process the pieces in the tray. An alternative method of preparing residual pieces if described in D–7–e below.

(e) A new physical separation method of preparing and documenting residual mail is added as an alternative option for mailers who cannot sequence residual mail by 3-digit Zip Code area as described above. Under this option, Zip+4 and delivery point barcoded mail pieces are placed in separate trays from those that are not Zip+4 or delivery point barcoded. If mailers wish to claim Zip+4 rates on pieces that do not bear a barcode, but bear a correct numeric Zip+4 code, the residual pieces that are not Zip+4 barcoded or delivery point barcoded may be further separated into trays that contain only pieces with numeric Zip+4 codes and trays that contain only pieces with numeric 5-digit Zip Codes. The pieces in all residual trays must be further separated into groups of 100 pieces. The information from thee physical counts must be included in the summary portion of the required documentation.

(f) Tray label requirements are clarified. The requirements for labeling 3-digit trays are made consistent with the new sections in 560. The proposed regulations also specify that trays of all classes of mail must show the name of the mailer and the mailer location on line 3 of the tray label rather than the post office of origin. The descriptive prefix "FR" (meaning "from") that appears in front of the name of the mailer is omitted. With new destination rates and use of the plant-verified drop shipment procedures by mailers, the name of the mailer and the mailer location are more descriptive of where the mail originated.

(g) A statement is added to clarify that only standard-size 2-foot trays may be used to prepare presorted Zip+4 Barcoded rate mail under this option

Note: As explained in part E below, the adoption of consolidated presortation requirements is not being extended to the tray based Zip+4 Barcoded rate preparation portion of chapter 5 at this time.

(8) A new preparation option for 5-digit Zip+4 barcoded rate mailings is added as 563.2. A summary of the requirements of this new preparation option follows:

(a) Only Zip+4 barcoded or delivery point barcoded pieces may be included in the mailing. That is, 5-digit Zip+4 Barcoded rate mailings prepared under this option must consist of 100 percent Zip+4 barcoded or delivery point barcoded pieces. Pieces that do not bear a Zip+4 barcode or a delivery point barcode cannot be submitted as part of a 5-digit barcoded rate mailing under DMM 563.2. Such pieces must be submitted in a separate mailing. The reasons for requiring 100% barcoded pieces were set forth in section D–7–a above.

(b) This package-based sortation option will allow a package of 10 or more pieces for any 5-digit Zip Code area to obtain the 5-digit Zip+4 Barcode rate. As explained in part E below, pieces that cannot be placed in a group of 10 or more Zip+4 barcoded or delivery point barcoded pieces for a 5-digit Zip Code area cannot be included in the mailing.

(c) Groups of 10 or more pieces for a 5-digit Zip Code area must be placed in full 5-digit or full 3-digit trays, or in SCF trays. Only SCF trays may be less than full. To limit the number of less-than-full trays in the system, overflow trays (which are less than full by definition) to 5-digit and 3-digit destinations are not permitted. It is not as efficient on a cost per piece basis to transport less-than full trays, since a less-than-full tray occupies the same amount of space as a full tray in a truck or airplane. Because all pieces in the mailing are eligible for the same rate regardless of the sortation level of the tray in which they are placed, the prohibition against less-than-full 5-digit and 3-digit trays should not adversely affect mailers.

(d) Groups of 10 or more pieces for the same 5-digit ZIP Code area must be delineated by separator cards when placed in full 3-digit and full SCF trays. This will allow the Postal Service the option of consolidating the small groups for various 5-digit areas into full trays to 5-digit areas. The use of separator cards as opposed to rubber bands in full trays allows for easier postal handling of the mail and is not as likely to bend the mailpieces as packaging is.

(e) Pieces in less-than-full SCF trays must be packaged by 5-digit ZIP Code area and labeled. Packaging is necessary to maintain the orientation of the pieces in the trays and labeling the packages gives the Postal Service more flexibility when determining the best way to process the pieces in the tray. The packages must be secured with rubber bands.

(f) Many mailers have indicated a desire to use 1-foot trays. The Postal Service has determined to permit mailers to use 1-foot trays (half-trays) to prepare 5-digit trays in the mailing on the condition that the mailer provides the 1-foot trays and their sleeves. The trays and sleeves must meet postal specifications. The Postal Service will not undertake the provision of 1-foot trays to mailers. The cost of these smaller trays is nearly equal to the cost of procuring standard 2-foot trays. Procuring 1-foot trays in sufficient quantity to allow the Postal Service to provide them to any mailer wishing to use them, as well as developing storage, distribution, and inventory systems that would assure that the trays were available at all the locations needed by mailers is not economical for the Postal Service. In order to limit the demands of

handling the 1-foot trays on our current storage and inventory systems for these trays, the Postal Service proposes to limit mailer use of these trays in 5-digit ZIP+4 Barcoded rate mailings to 5-digit trays. As supplemental information for those wishing to make specific comments concerning the specifications for constructing 1-foot trays and their sleeves, specifications can be obtained, during this notice and comment period, by requesting in writing or in person (between 9 a.m. and 4 p.m.), at the following address: Director, Office of Classification and Rates Administration, United States Postal Service, 475 L'Enfant Plaza, SW., room 8430, Washington, DC 20260–5903. This address is different from the address shown in the body of the regulations for obtaining this information in the future.

(g) All pieces in the mailing qualify for the 5-digit ZIP+4 barcoded rates.

(h) There are no documentation requirements.

(9) New section 563.3 adds a package-based sortation option for mailings at the 3-digit ZIP+4 Barcoded and basic ZIP+4 Barcoded (or First-Class nonpresorted) rates. The major provisions of this section are as follows:

(a) Pieces that do not bear ZIP+4 barcodes or delivery point barcodes will be permitted in such mailings if at least 85 percent of the pieces in the mailing are properly ZIP+4 barcoded or delivery point barcoded.

(b) This sortation option will allow ZIP+4 barcoded and delivery point barcoded pieces in full 3-digit trays containing at least 50 pieces, as well as any group of 50 or more pieces for a 3-digit area that is placed within an SCF tray, to qualify for the 3-digit ZIP+4 Barcoded rate. Only SCF trays may be less than full. Overflow trays to 3-digit ZIP Code areas (overflow trays are less than full by definition) are not permitted, to limit the number of less-than-full trays in the system. (Less-than-full trays can adversely affect transportation costs as described in D–8–c above.) Because a group of 50 or more pieces for a 3-digit ZIP Code area may qualify for the 3-digit Barcoded rate regardless of whether it is placed in a 3-digit tray or an SCF tray, the prohibition against less-than-full 3-digit trays should not adversely affect mailers.

(c) Pieces that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area are residual pieces. Residual pieces that are ZIP+4 barcoded or delivery point barcoded will qualify for the First-Class nonpresorted ZIP+4 Barcoded rate for cards or, if other than cards, the nonpresorted ZIP+4 rates; the second-class Level A/G/J1 ZIP+4 Barcoded rates; or the third-class basic ZIP+4 Barcoded rates.

(d) Mailers may use 1-foot trays only for 3-digit tray sortation. As noted previously in section D–8–f, mailers must provide the 1-foot trays and their sleeves and the trays and sleeves must meet postal specifications for their construction.

(e) Residual mail (mail that cannot be placed in a group of 50 or more pieces for a 3-digit area) can be packaged, placed in SCF trays, and listed by 3-digit area by rate category on documentation. An alternative is to separately tray residual mail by rate category. That is, place ZIP+4 barcoded or delivery point barcoded pieces in separate trays from nonbarcoded pieces. Mailers wishing to claim ZIP+4 rates on pieces that are not barcoded but that bear a correct numeric ZIP+4 code, must further separate nonbarcoded residual pieces into trays containing pieces with numeric ZIP+4 codes and trays containing pieces with 5-digit ZIP Codes. The pieces in each category of residual tray must then be separated into groups of 100 pieces. The summary portion of documentation must include the residual pieces separated and counted in this manner.

(f) Except for residual mail, packaging is prohibited in full trays. In full SCF trays the qualifying mail to each 3-digit ZIP Code area in the tray must be grouped together and residual pieces must be packaged and labeled by 3-digit area. All mail in less than full SCF trays (both qualifying groups of 50 or more pieces to a 3-digit ZIP Code area and residual) must be packaged and labeled by 3-digit area. The packages must be secured with rubber bands. The grouping and packaging requirements allow the Postal Service more flexibility when determining the best way to process pieces in a tray.

(10) A new section 563.4 is added that allows mailers to prepare as one mailing having two portions (the 5-digit portion of the mailing prepared under 563.2 and the 3-digit portion of the mailing prepared under 563.3) for purposes of meeting minimum quantity requirements for mailing and for meeting the overall 85% ZIP+4 barcoded or delivery point barcoded piece requirement for the 3-digit Barcoded rates. Additional documentation requirements are necessary for the 5-digit portion of the mailing when this option is used.

E. Postal Service's Intent to Eliminate the Preparation Options In Chapters, 3, 4, and 6

Since regulations for ZIP+4 First-Class Mail were first implemented in 1983, they have been amended to allow combined ZIP+4 Presort and Presorted First-Class mailings (in 1985), and optional mailings exclusively for 3-digit automated site service areas (in 1986). In 1988, new rates were offered, and implementing regulations were adopted, for ZIP+4 third-class mail, and for ZIP+4 barcoded First- and third class mail. In 1991, a nonpresorted ZIP+4 Barcoded First-Class card rate was introduced, ZIP+4 and ZIP+4 Barcoded rates were extended to letter-size second-class mail, and the automated site preparation option was further offered in second- and third-class.

Before 1991, the regulations for each rate were generally self-contained, i.e., each rate's regulations presented relatively complete and separate (but relatively parallel) requirements for the physical mailpiece, for technical preparation of the ZIP+4 code or barcode, and or presortation and documentation of the mailing.

In late 1990, the Postal Service proposed to establish more specific and comprehensive standards for mail being processed over automated equipment (automation-compatible mail) and claimed at the ZIP+4 or ZIP+4 Barcoded (automation-based) rates. The final rule implementing these standards was published on January 23, 1991 (56 FR 2598–2631).

At this time, the Postal Service was preparing to implement a wide range of automation-based rates adopted as part of the recent postal rate case (PRC Docket No. R90–1), and was preparing the regulations necessary to support eligibility for those rates.

It became apparent at that time that continued development of separate requirements for the several automation-based rates in chapters 3,4, and 6 (for First-, second-, and third-class mail, respectively) would not only be inefficient, but needlessly redundant and difficult to maintain in a consistent manner. Logically, since the technical mailpiece preparation requirements to automation-compatible mail were identical regardless of class, the Postal Service concluded that long-term regulatory simplicity, consistency, and efficiency necessitated consolidation of both new revised requirements for physical mailpiece characteristics, address quality, address readability, and ZIP+4 barcode readability into one place, and that was determined to be the then-vacant chapter 5.

Through publication of the final rule for automation-compatible mail (noted above) and the final rule implementing the Docket No. R90–1 rate changes (56 FR 3616–3728, January 30, 1991), the Postal Service relocated and

consolidated its mailpiece preparation requirements for automation-based rates (not including presort and documentation requirements) into chapter 5. Sections 510 through 550, and 570 through 590, became mandatory on February 24, 1991, and the sections of chapters 3, 4, and 6 that had contained the corresponding information were deleted.

The Postal Service also concluded that the same reasons justified centralization of the mail preparation (presort and documentation) requirements for automation-based rates into chapter 5, but, given the physical demands of that task and the short time available, it could not be completed in time for implementation on February 24, 1991. Therefore, the Postal Service elected to leave the applicable portions of chapters 3, 4, and 6 in place until such time as the necessary consolidated regulations could be developed, evaluated, and published for comment. Instead, the Postal Service implemented the mail preparation requirements in current section 560 (full-tray makeup) as an option for those mailers whose operational and mailing list characteristics made those options economically desirable for presorting and documenting ZIP+4 and ZIP+4 Barcoded rate mailings. Concurrently, the Postal Service began to make customers aware that, over the ensuring 12–24 months, it planned to finish the consolidation of the eligibility regulations for ZIP+4 and ZIP+4 Barcoded rates into chapter 5 by undertaking further rulemakings to complete the centralization effort.

This proposed rule continues the process of consolidation of the mail preparation requirements for automation-based rates, and focuses that consolidation on the new ZIP+4 Barcoded rate options introduced in this proposal.

Currently, the presortation regulations for First-, second- and third-class automation mailings are contained in chapters 3, 4 and 6 respectively. The presortation requirements, which were developed independently prior to the establishment of the applicable automation-based rate categories for those classes, vary substantially from class to class. The application of these requirements to automation mail has produced a confusing array of rules for both the Postal Service and the mailers to apply. For example, the presortation rules for First-Class Mail call for a minimum of 10 pieces to a 5-digit area and 50 pieces to a 3-digit area to qualify for presorted automation rates. Second-class has a 6 pieces per package minimum. Third-class has a 10-piece per package minimum for both 5-digit and 3-digit mail. These rules are further complicated by additional tray or sack preparation rules. For example, in second-class, a minimum of four 6-piece packages is necessary to make up a 5-digit sack. In some situations a minimum of 125 pieces of third-class mail is required to make up a qualifying sack. Moreover, until recently, sack preparation was required for second- and third-class mail, while tray preparation was required for First-Class Mail.

The Postal Service has determined that this complex array of different, and sometimes contradictory, mail preparation rules is counterproductive to the efficient preparation, acceptance and processing of automation-compatible mail. —

Regardless of class of mail in which it is entered, automation-compatible mail needs to be "compatible" with the Postal Service automated mail processing equipment and needs to be presented to the Postal Service in a manner that most efficiently aids that automated processing.

As noted above, the Postal Service has already revised its regulations to prescribe consolidated mailpiece preparation rules for all ZIP+4 rate mail and for all ZIP+4 Barcoded rate mail. With this proposed rule, the Postal Service is extending that approach to the mail preparation rules for ZIP+4 Barcoded rate mail in order to eliminate the current confused and complicated procedures, ease the Postal Service's administration of the automated mail program, make the Postal Service's regulations clearer and easier to use and facilitate mailer preparation of barcoded mail. The two most significant changes that would occur from the adoption of the presently proposed mail preparation options for the new barcoded mail procedures in chapter 5 would be the required use of trays and the establishment of a single set of presortation requirements for similar rate categories of barcoded mail.

The Postal Service has determined that the use of trays, sleeved and banded where appropriate, is the best method for handling and transporting groups of automation-compatible mailpieces so that they retain their orientation and do not become bent or torn. The use of trays will ensure that this mail retains the physical characteristics necessary to maximize its successful processing on the automated equipment.

In examining the current mail presortation methods applicable to barcoded rate mail, the Postal Service has determined to adopt the provisions that apply to First-Class for all ZIP+4 Barcoded rate mail. First, these rules (10 pieces to a 5-digit area, 50 pieces to a 3-digit area) currently apply to by far the largest volume of automation rate mail. Second, the First-Class rules were designed to apply primarily to letter-size mail, the type of mail to which the chapter 5 preparation requirements apply. The sortation rules for second- and third-class mail were designed for a much more diverse mail base that was not predominately letter-size.

Third, of the existing sortation rules, requiring a minimum of 10 pieces to qualify for a 5-digit presort rate and 50 pieces to qualify for a 3-digit presort rate makes the most sense in light of the Postal Service's automation program. A certain minimum number of pieces is necessary before the Postal Service can efficiently handle a group of barcoded mail presorted to a 5-digit area and transfer that group from a 3-digit or SCF tray to a consolidated tray for barcoded mail destined to the same 5-digit area. If the number of pieces in the group is too low, it would be more efficient for the Postal Service to handle that mail as part of a larger 3-digit group and sort it to 5-digit areas using a barcode sorter. The Postal Service believes that 10 pieces is the absolute minimum number that should be handled as a separate 5-digit presorted group of barcoded letter mail. Similarly, a substantial group of 3-digit presorted pieces is necessary before a presortation discount can be justified for a 3-digit barcoded mail makeup. The Postal Service believes that 50 pieces is an appropriate number to justify maintaining this mail as a separate group for transportation to a destinating mail processing facility instead of consolidating this mail with all other barcoded mail as part of the outgoing mail processing operation.

With the addition of the new sortation options proposed in this rulemaking, elimination of all non-chapter 5 ZIP+4 rate and ZIP+4 barcoded rate mail preparation provisions is not expected to create a rate qualification hardship for most mailers. Second-class mailers that can currently qualify for 3-digit ZIP+4 Barcoded rates (levels B3/H3/J3) with as few as 24 pieces (four packages of 6 pieces each to an optional city or unique 3-digit area) in an optional city or unique 3-digit sack (see DMM 424.53) could be affected. Chapter 5 (563.3) preparation will require at least 50 pieces of mail to qualify for a 3-digit Barcoded rate. However, under chapter 5 preparation, a group of 50 pieces to any 3-digit area (not just unique 3-digi-

areas as required in chapter 4) may qualify for the 3-digit ZIP+4 Barcoded rate. Furthermore, in order for second-class mailers to qualify for the 5-digit ZIP+4 Barcoded rates (levels B5/H5/J5) the uniform package requirement of 10 pieces will apply in chapter 5 as opposed to the chapter 4 requirement for 6-piece packages. However, 424.532 currently requires that a 6-piece package must be in a 5-digit sack with at least 3 other 6-piece packages, or in an optional city or unique 3-digit sack that contains at least four 6-piece packages. Under the chapter 5 requirements for second-class mail, as few as 10 ZIP+4 barcoded pieces to a 5-digit ZIP Code area within an SCF tray may qualify for 5-digit ZIP+4 Barcoded rates.

Third-class mailers would also be affected. In place of the current 10-piece sortation minimum for preparing 3-digit packages, chapter 5 would require a 50-piece minimum for 3-digit ZIP+4 Barcoded rates. However, 50 pieces to a 3-digit area would receive the 3-digit ZIP+4 Barcoded rate. Under current rules in chapter 6, to qualify for the 3-digit Zip+4 barcoded rates a mailing would have to have at least 125 pieces of 3-digit mail (both 5-digit and 3-digit packages) to make up a 3-digit sack in which the 3-digit packages could qualify for the 3-digit ZIP+4 Barcoded rate. (The 5-digit packages in this sack would qualify for the 5-digit ZIP+4 Barcoded rate.)

Because of these types of trade-offs, the Postal Service believes that most mailers may find their overall rate qualification levels under proposed chapter 5 preparation to be similar to or better than under current chapters 3, 4, and 6 preparation.

The Postal Service has not proposed the extension of these consolidated presortation requirements to ZIP+4 mail presented under chapter 5. To do so might have adversely affected current mailers who would be required to adjust their mail preparation in a short time frame. In addition, the Postal Service believes that the introduction of address block barcoding on June 16, 1991, will eliminate the primary barrier that has prevented ZIP+4 mailers from applying barcodes to their mail and qualifying for the lower ZIP+4 Barcoded rates. The Postal Service expects a large proportion of ZIP+4 mailers to convert to barcoding in the near future and does not want to add another adjustment to that process at this time. However, the Postal Service does expect to propose revisions to the chapter 5 ZIP+4 preparation requirements at the time it proposes to eliminate the automation rate provisions of chapters 3, 4, and 6.

A similar situation applies to the current tray-based option for ZIP+4 barcoded mail in chapter 5. Although some changes are being proposed at this time, as discussed above in part D, the Postal Service is not proposing the extension of the 10/50 piece presortation rules to this option at this time. First, this option already has full tray requirement for 5-digit presorted mail. Second, the application of a 50-piece 3-digit requirement would be a hardship on second-class and third-class mailers who currently prepare full SCF trays under this option. However, the Postal Service does intend to look toward possible consolidation of the "tray-based" option with the proposed "package based" option in the future as part of the long-term effort to consolidate all automation rate provisions in chapter 5.

The estimated completion of the transition to exclusive use of chapter 5 is March, 1992. At that time chapter 5 would contain the sole set of presort and documentation regulations for automation-based rate mailings; existing provisions of chapters 3, 4, and 6 would be eliminated. As stated in the Summary above, mailers are invited to comment on the proposed concept of eliminating the current automation-compatible mail provisions in chapters 3, 4, and 6 and on the proposed effective date of this transition.

F. Miscellaneous Changes

1. The postage payment requirements in DMM 380 and DMM 661 are amended to indicate how postage should be applied to the new sortation options added to chapter 5, and to correct some errors in 661.

2. The sentence "If material on which the barcode is to appear is printed in a "halftone screen," it must not contain fewer than 200 lines per inch (dot size) or be printed with more than a 20 percent screen." is omitted from section 551.44. DMM 551.44 contains reflectance requirements for dark fibers and background patterns on the material upon which barcodes will be printed. Although the stated requirements for halftone screens are necessary for character recognition by USPS OCR equipment, they are not necessary for recognition of barcodes by USPS barcode sorters. Accordingly, the language concerning halftone screens is omitted in 551.44. This language remains in 543.35 which states reflectance requirements for OCR readability.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 533 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 380—PAYMENT OF POSTAGE

2. Revise section 382 of part 380 to read as follows:

382 Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP+4, Nonpresorted ZIP+4 Barcoded, ZIP+4 Presort, 5-Digit ZIP+4 barcoded, and 3-Digit ZIP+4 Barcoded Rates

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383.2 Exact Postage on Each Piece

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383.232 National Mailings Prepared Under Chapter 5

a. Mailings Prepared under 563.1. [Insert current 382.232. Delete the phrase "precanceled postage or" from the first sentence. Change the phrase "chapter 5" to "563.1." Add the following note:

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(a) or 382.33b(2)(a) for procedures to follow when a non-denominated precanceled stamp is used.

b. Mailings Prepared Under 563.2. When meter stamps are used, each piece in national mailings prepared in accordance with 563.2 must have postage affixed at the 5-digit ZIP+4 Barcoded rate.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(b) or 382.33b(2)(b) for procedures to follow when a non-denominated precanceled stamp is used.

c. Mailings Prepared Under 563.3. When meter stamps are used, pieces in national mailings prepared in accordance with 563.3 must have postage affixed at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate as appropriate in the qualifying portion of the mailing; and postage affixed at the Nonpresorted ZIP+4 Barcoded rate (if eligible for the card rates), the Nonpresorted ZIP+4 rate, or the single

piece rate if in the residual portion of the mailing.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(c) or 382.33b(2)(c) for procedures to follow when a non-denominated precanceled stamp is used.

d. Mailings Prepared Under 563.4. When meter stamps are used, pieces in national mailings prepared in accordance with 563.4 must have postage affixed at the 5-digit ZIP+4 Barcoded rate in the 5-digit portion of the mailing (sorted in accordance with 563.2); at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate as appropriate in the qualifying portion of the mailing (sorted in accordance with 563.3); and at the Nonpresorted ZIP+4 Barcoded rate (if eligible for the card rates), the Nonpresorted ZIP+4 rate, or the single piece rate if in the residual portion of the mailing (prepared in accordance with 563.3).

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(d) or 382.33b(2)(d) for procedures to follow when a non-denominated precanceled stamp is used.

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382.3 Postage at Lowest Rate in Mailing Affixed to All Pieces in the Mailing

382.31 Identical Pieces

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d. ZIP+4 Barcoded Presort Rate Mailings

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(2) National Mailings Prepared Under Chapter 5

(a) Mailings Prepared Under 563.1. Insert current 382.31d(2). Change the phrase "or precanceled postage" to "and." Change the reference to "chapter 5" to "563.1."Add the following note:

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.142. The additional postage may be paid in the same manner as for metered mailings.

(b) Mailings Prepared under 563.2. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 563.2 are paid by meter stamps and are of identical size and weight, the entire mailing must have postage affixed at the 5-Digit ZIP+4 Barcoded rate.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage amounting to the difference between the face value of the non-denominated stamp and the 5-digit ZIP+4 Barcoded rate. The additional postage may be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

(c) Mailings Prepared Under 563.3. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 563.3 are paid by meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 563.34 are met. Additional postage in the amount documented in accordance with 563.34 for pieces subject to other rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, 524.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.342 or 563.343. The additional postage may be paid in the same manner as for metered mailings.

(d) Mailings Prepared Under 563.4. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 563.4 are paid by meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 barcoded rate if the documentation requirements in 563.45 are met. Additional postage in the amount documented in accordance with 563.45 for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

Note: Currently, there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.452. The additional postage may be paid in the same manner as for metered mailings.

* * * * *

382.33 Nonidentical Pieces at All ZIP+4 Presort and ZIP+4 Barcoded Rates

a. ZIP+4 Presort Mailings. [Change the reference "365.33" to "365.33, 366.3, or 562.5".]

b. ZIP+4 Barcoded Presort Mailings

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(2) National Mailings Prepared Under Chapter 5

(a) Mailings prepared Under 563.1. Insert current 332.33b(2), change the reference to "Chapter 5" to "563.1". Add the following note:

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.142. The additional postage may be paid in the same manner as for metered mailings.

(b) Mailings prepared Under 563.2. 5-digit ZIP+4 Barcoded rate mailings of non-identical weight pieces, prepared in accordance with 563.2, must have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Therefore, non-identical weight pieces prepared under 563.2 must not be prepared with precanceled stamps.

(c) Mailings prepared Under 563.3. ZIP+4 Barcoded mailings of non-identical weight pieces, prepared in accordance with 563.3, may have postage affixed to each piece at the 3-digit ZIP+4 Barcoded rate if the applicable documentation requirements in 563.34 are met. Additional postage in the amount documented in accordance with 563.34 for pieces subject to other rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, 524.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.342 or 563.343. The additional postage may be paid in the same manner as for metered mailings.

(d) Mailings prepared Under 563.4. ZIP+4 Barcoded mailings of non-identical weight pieces, prepared in accordance with 563.4, may have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate if the documentation requirements in 563.45

are met. Additional postage in the amount documented in accordance with 563.45 for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.452. The additional postage may be paid in the same manner as for metered mailings.

* * * * *

382.4 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

A. General. Add the following to the end of this section:

Exception: Any 5-digit ZIP+4 Barcoded rate mailings prepared with meters under 563.2 must have postage affixed to each piece in the mailing at the 5-digit ZIP+4 Barcoded rate, unless refund for postage added procedures are followed as described in 147.42, or if precanceled stamps of the same denomination are used for identical weight mailings.

3. Revise the title of chapter 5 to read as follows:

CHAPTER 5—AUTOMATION COMPATIBLE MAIL—REQUIREMENTS FOR ZIP+4 AND ZIP+4 BARCODED RATE MAILINGS

PART 510—GENERAL

4. Revise section 512 in part 510 to read as follows.

512 Applicability

512.1 General Eligibility Requirements

[Insert current 512.1.]

512.2 Specific Eligibility Requirements

[Insert current 512.2.] Add the following note:

Note: The alternative preparation requirements of section 560 (see 513 below) provide an alternative to some of the specific eligibility requirements in chapters 3, 4, and 6."]

513 Alternative, Presort, and Documentation Requirements

[Insert the first sentence of current 513. Add the following: "Mailers may submit mailings in accordance with the requirements of 560 rather than the corresponding presort, and documentation requirements in chapters 3, 4, and 6. The Postal Service intends to eliminate the presort and documentation requirements currently set forth in chapters 3, 4, and 6 in the future and provide only the preparation options in 560 to qualify for presorted ZIP+4 and ZIP+4 Barcoded rates. The effective date for this change will take into account recommendations from the mailing industry to allow a sufficient transition period and will be set through a rulemaking process noted in the **Federal Register** and the Postal Bulletin.

Note: To the extent that rate eligibility is dependent upon presort, 560 offers different rate eligibility options to those in chapters 3, 4, and 6."]

PART 520—GENERAL REQUIREMENTS FOR ALL AUTOMATION—COMPATIBLE MAILPIECES

5. In part 520, revise 521.3 to read as follows:

521.3 Weight

521.31 ZIP+4 Rate Mailings

The weight of each mailpiece in a ZIP+4 rate mailing must not exceed 2.5 ounces.

521.32 ZIP+4 Barcoded Rate Mailings

The weight of each mailpiece in a ZIP+4 Barcoded rate mailing must not exceed 3.0 ounces.

PART 550—REQUIREMENTS FOR BARCODED PIECES

6. In part 550, revise 551.4 to read as follows.

551.4 Reflectance

551.41 Background Reflectance

551.411 Pieces Barcoded in the Lower Right Corner

a. Barcode Clear Zone—Pieces Bearing ZIP+4 or Delivery Point Barcodes. The material (envelope, card, insert material, or outermost sheet) in the barcode clear zone (see 551.22) must produce a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum when measured with a USPS or USPS—licensed envelope reflectance meter. White and pastel colors generally satisfy this requirement.

b. Barcode Clear Zone—Pieces Not Bearing a ZIP+4 or Delivery Point Barcode. It is strongly recommended that pieces included in any ZIP+4 Barcoded rate mailing that do not bear a ZIP+4 or delivery point barcode include a barcode clear zone in the lower right corner of the address side of the mailpiece as described in 551.22 that meets the background reflectance requirements of 551.411a. Effective September 20, 1992, all pieces in ZIP+4 Barcoded rate mailings that do not bear a ZIP+4 or delivery point barcode must contain a barcode clear zone as specified in 551.22 that meets the background reflectance requirements of 551.411a.

551.412 Pieces Barcoded in the Address Block

a. Pieces Bearing ZIP+4 or Delivery Point Barcodes. If the barcode is placed in the address block, the background reflectance of the area surrounding the address block barcode, and within ⅛ inch of the left- and right-most bars and 1/25 inch above and below the barcode, must produce a background reflectance of at least 50% in the red and 45% in the green spectrum.

b. Barcode Clear Zone—Pieces Not Bearing a ZIP+4 or Delivery Point Barcode. It is strongly recommended that pieces included in address block barcoded ZIP+4 Barcoded rate mailings that do not bear a ZIP+4 or delivery point barcode in the address block include a barcode clear zone in the lower right corner of the address side of the mailpiece as specified in 551.22, that meets the background reflectance requirements of 551.411a. Effective September 20, 1992, all pieces in ZIP+4 Barcoded rate mailings that do not bear a ZIP+4 or delivery point barcode must contain a barcode clear zone as specified in 551.22 that meets the reflectance requirements of 551.411a.

551.42 Print Reflectance Difference

A print reflectance difference (PRD) of at least 30 percent is required between the background material of the mailpiece and the barcode in both the red and the green spectrums. This requirement is generally satisfied by using black or dark blue ink on a white or pastel background. Other color combinations should be measured to ensure compliance with the minimum print reflectance difference. The PRD expressed as a percentage equals the reflectance of the background minus the reflectance of the ink, multiplied by 100. Reflectance measurements must be made with a USPS or USPS licensed envelope reflectance meter.

551.43 [Insert text of existing 551.43.]

551.44 Dark Fibers and Background Patterns

551.441 ZIP+4 or Delivery Point Barcoded Pieces

[Insert text of existing 551.44; delete the last sentence.]

551.442 Pieces Not Bearing a ZIP+4 or Delivery Point Barcode

It is strongly recommended that all pieces within a ZIP+4 Barcoded rate mailing that do not bear a ZIP+4 or delivery point barcode include a barcode clear zone as specified in 551.22 that meets the requirements for dark fibers and background patterns in 551.441. Effective September 20, 1992, all non-ZIP+4 or delivery point barcoded pieces in a ZIP+4 Barcoded rate mailing must include a barcode clear zone (see 551.22) that meets the requirements of 551.441.

7. In part 560, revise the title to read as follows:

560 Rate Eligibility, Presort, and Documentation Requirements

8. Revise 561 to read as follows:

561 General

561.1 Explanation of Options

561.11 Preparation in Accordance with Other DMM Chapters

At the present time, mailers may prepare mailings in accordance with the rate eligibility, presort, and documentation requirements for ZIP+4 and ZIP+4 Barcoded rates set forth in chapter 3 for First-Class Mail, chapter 4 for second-class mail, or Chapter 6 for third-class mail. However, the Postal Service intends to eliminate these options in the future and provide only the preparation options in this chapter (chapter 5) to qualify for presorted ZIP+4 and ZIP+4 Barcoded rates. The effective date for this change will take into account recommendations from the mailing industry to allow a sufficient transition period and will be set through a rule making process noted in the Federal Register and the Postal Bulletin.

561.12 Preparation in Accordance with this Chapter (Chapter 5)

There is only one method of preparation (tray-based) for presorted ZIP+4 rated mailings (see 562). For ZIP+4 Barcoded rate mailings, there are two major methods of preparation: tray-based (see 563.1), and package-based (see 563.2, 563.3, and 563.4).

561.2 Trays

561.21 Tray Usage

All mailings prepared under chapter 5 must be prepared in trays.

561.22 Definition of "Full" Tray

For purposes of section 560, a "full" tray is one that is at least ¾ full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight.

561.23 Sleeving and Banding

[Insert text of existing 561.24.]

561.24 Tray Labels

Insert the text of existing 561.25 with the following revision: In the last sentence, change the phrase "except that the second (contents) line on tray labels bears the information specified in 562.3 and 563.3" to read "except that the second (contents) line and the third (mailer, mailer location) line on tray labels shows the information specified in 562.324, 562.42, 563.132d, 563.132e, 563.232e, 563.332d, and 563.332e."

PART 562—PRESORTED ZIP+4 MAIL

9. Revise 562 to read as follows:

562 Presorted ZIP+4 Mail

562.1 Eighty-Five Percent Requirement

At least 85% of the total pieces in a ZIP+4 rate mailing must bear the correct ZIP+4 code (see 530 and 540). All remaining pieces must bear a 5-digit ZIP Code. If the correct ZIP+4 barcode or delivery point barcode (prepared as required by 530 and 550) is used to satisfy the requirement for a ZIP+4 code, the correct numeric ZIP+4 code as 5-digit ZIP Code must also appear in the address.

562.2 Rate Eligibility

562.21 First-Class Mail

562.211 5-Digit, 3-Digit, and SCF Trays

ZIP+4 coded pieces in 5-digit, 3-digit, and SCF trays may qualify for the ZIP+4 Presort rate. Other pieces in these trays may qualify for the Presorted First-Class rate. 5-digit and 3-digit trays must be full trays (see 561.22) or overflow trays (see 562.322). In SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code area.

562.212 Residual Trays

Residual pieces (pieces remaining after preparing full and overflow 5-digit and 3-digit trays, and SCF trays with at least 50 pieces per 3-digit ZIP Code area) may qualify for the nonpresorted ZIP+4 rate (if ZIP+4 coded) or the single-piece First-Class rate.

562.22 Second-Class Mail

562.221 5-digit and 3-digit Trays

ZIP+4 coded pieces in 5-digit and 3-digit trays may qualify for the level B5/H5/J5 and B3/H3/J3 ZIP+4 rates respectively. Other pieces in these trays may qualify for the level B/H/J rates. These trays must be full trays (see 561.22) or overflow trays (see 562.322).

562.222 SCF Trays

ZIP+4 coded pieces in SCF trays may qualify for the level A/G/J1 ZIP+4 rates. Other pieces in SCF trays may qualify for the level A/G/J rates. There is no minimum quantity for SCF trays. All pieces in second-class ZIP+4 mailings must be sorted to at least the SCF level.

Note: Less than full trays that contain mail for only one 3-digit area must be labeled in accordance with the requirements for 3-digit trays (see 562.324b and 562.324c). However, such a tray is considered an SCF tray for rate purposes, except when it is an overflow tray. A less than full tray for a particular 3-digit destination can be considered an overflow tray only when there is at least one other full tray in the mailing for that same 3-digit destination (see 562.322). Overflow trays must also be separately documented as required in 562.322.

562.23 Third-Class Mail

562.231 5-Digit and 3-Digit Trays

ZIP+4 coded pieces in 5-digit and 3-digit trays may qualify for the 3/5 ZIP+4 rates. Other pieces in these trays may qualify for the 3/5 presort rates. These trays must be full trays (see 561.22) or overflow trays (see 562.322).

562.232 SCF Trays

ZIP+4 coded pieces in SCF trays may qualify for the basic ZIP+4 rate. Other pieces in SCF trays may qualify for the basic presort rate. There is no minimum quantity for SCF trays. All pieces in third-class ZIP+4 mailings must be sorted to at least the SCF level.

Note: Less than full trays that contain mail for only one 3-digit area must be labeled in accordance with the requirements for 3-digit trays (see 562.324b and 562.324c). However, such a tray is considered an SCF tray for rate purposes, except when it is an overflow tray. A less than full tray for a particular 3-digit destination can be considered an overflow tray only when there is at least one other full tray in the mailing for that same 3-digit destination (see 562.322). Overflow trays must also be separately documented as required in 562.322.

10. Replace existing sections 562.3 through 563.6 with the following:

562.3 Sortation Requirements

562.31 Facing, ZIP-Code Grouping, and Packaging of Pieces in Trays

562.311 Facing

All the pieces in each tray in the mailing must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

562.312 ZIP Code Grouping and Packaging Requirements

a. Five-Digit and 3-Digit Trays

(1) Full Trays. There are no ZIP Code grouping requirements in 5-digit and 3-digit trays. Packaging is not permitted in full 5-digit and 3-digit trays.

Note: 5-digit and 3-digit trays are required to be full (see 562.324a and 562.324b) except that less than full overflow trays are permitted as described in 562.322.

(2) Overflow Trays. The pieces in overflow trays to 5-digit and 3-digit destinations as provided in 562.322 (overflow trays are less than full by definition) must be packaged to preserve their orientation. All packages must be labeled as either 5-digit packages or 3-digit packages as appropriate. See 562.312d for further requirements on securing and labeling packages.

b. SCF Trays

(1) First-Class Mailings. There must be at least 50 pieces for each 3-digit ZIP Code area within SCF trays. Within SCF trays for SCFs serving more than one 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. In less than full trays to any SCF, the pieces for each 3-digit ZIP Code area must be rubber-banded together into packages to maintain their orientation in the tray and labeled. See 562.312d for further requirements on securing and labeling packages.

(2) Second- and Third-Class Mailings. There are no minimum quantity requirements per 3-digit ZIP Code area in SCF trays of second-and third-class mail. Within SCF trays for SCFs serving more than one 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. In less than full trays to any SCF, the pieces should be secured together into packages to maintain their orientation in the tray. Packages must contain mail for only one 3-digit ZIP Code area and be labeled as 3-digit packages. See 562.312d for further requirements on securing and labeling packages.

c. Residual Trays (First-Class Mail Only). See 562.42.

d. General Requirements for Securing and Labeling Packages.

(1) Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(2) Labeling Packages. The top piece in each package must bear the red "D" (for 5-digit packages in 5-digit overflow trays) or the green "3" (for 3-digit packages in 3-digit overflow trays, less than full SCF trays, and First-Class residual trays prepared in accordance with 562.42a) pressure sensitive package label in the lower left corner of the address side. Alternatively, the applicable 5-digit or 3-digit optional endorsement package label line may be used as specified in 369, 441.232, or 642.3.

562.2 Traying Requirements

562.321 General

The requirements in 561.2 must be met.

562.322 Volume per Tray and Preparation of Overflow Trays

Mailers should balance the volume in trays when more than one is prepared for the same destination to ensure that all 5-digit and 3-digit trays are full (at least ¾ full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight). If after this step, the remaining pieces for a 5-digit or 3-digit destination are not enough to generate an additional full tray, they may be placed in an overflow tray that is less than full, provided the pieces in the overflow tray are packaged and labeled (see 562.312a(2) and 562.312d), and only one such tray for a particular 5-digit or 3-digit destination is prepared in the mailing. To allow accurate verification of the mailing by postal acceptance personnel, the mailer must provide a listing of all such trays prepared in addition to the documentation required by 562.5.

562.323 Size and Availability of Trays

Only standard 2-foot trays may be used to prepare presorted ZIP+4 rate mailings. The Postal Service will provide mailers with the trays.

562.324 Tray Sortation

a. Five-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited, except that one overflow tray per 5-digit ZIP Code area is permitted as provided in 562.322. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP code.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words, "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

DETROIT MI 48235
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

b. Three-Digit Trays. If, after preparing all possible full 5-digit trays (and, at the mailer's option, overflow 5-digit trays), there are sufficient pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit trays must be prepared. Trays that are not full are prohibited, except that one overflow tray per 3-digit ZIP Code area is permitted as provided in 562.322. Trays must be labeled as follows:

(1) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

(2) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINIA VA 221
NEWS ZIP+4 PRESORT
ACE CNSTR CO ROCHESTER NY

c. SCF Trays

(1) Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 5-digit and full 3-digit trays (and, at the mailer's option, overflow 5-digit and 3-digit trays), there are pieces remaining for a single 3-digit SCF listed in Exhibit 122.63c that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. The pieces in the tray must be rubber-banded or otherwise secured into packages as described in 562.312b and 562.312d. There is no minimum quantity for single 3-digit SCF trays, except for those in First-Class mailings which must contain at least 50 pieces for the single 3-digit ZIP Code area. Trays must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by the 3-digit ZIP Code prefix of the pieces in the tray (see Exhibit 122.63c).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

MID–FLORIDA FL 327
FCM ZIP+4 PRESORT
FIRST BIOMDCL FAIRFAX VA

(2) Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 5-digit and full 3-digit trays (and, at the mailer's option, overflow 5-digit and 3-digit trays), there are sufficient pieces remaining to fill a tray for one of the SCFs that serve more than one 3-digit area (listed in Exhibit 122.63d), an SCF tray must be prepared. Trays that are less than full may also be prepared. There is no minimum quantity for these SCF trays, except for those in First-Class mailings which must contain at least 50 pieces for each 3-digit ZIP Code area contained in the tray. Pieces must be grouped by 3-digit area within the tray. When there is less than a full tray, the pieces in the tray must be secured into packages as described in 562.312b and 562.312d. Packages must contain mail for only one 3-digit ZIP Code area. If the tray contains pieces for only one 3-digit ZIP code area served by the SCF, the tray must be labeled as a 3-digit tray in accordance with 562.324b. Trays containing multiple 3-digit areas must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF Code shown in Exhibit 122.63d.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
3C ZIP+4 PRESORT
DR PATERNO BIGFOOT TX

562.4 Residual Mail

562.41 General

There is no residual mail for second- and third-class mailings. Residual mail for First-Class mailings consists of those pieces that cannot be placed into full 5-digit or 3-digit trays, are not placed in overflow trays, and are not of sufficient quantity to be part of a group of 50 or more pieces to a 3-digit ZIP Code area within an SCF tray.

562.42 Preparation of First-Class Residual Pieces

Residual pieces must be placed in trays that are separate from trays of qualifying pieces. The pieces in residual trays in First-Class mailings must be prepared in one of the following two ways:

a. ZIP Code Sequence and Listing Option. Residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. When a tray is less than full, the pieces in the tray must be packaged by 3-digit area and labeled as described in 562.312d. Mailers must provide a listing by 3-digit area of the pieces with and without a ZIP+4 Code as described in 562.5. Trays must be labeled as follows:

Line 1: Word "RESIDUAL" followed by the 3-digit ZIP Code range of the pieces in the tray.
Line 2: Words "FCM ZIP+4".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL 010–590
FCM ZIP+4
XYZ CORP BIGFOOT TX

b. Physical Separation Option. Residual pieces bearing ZIP+4 Codes must be separately trayed from residual pieces bearing 5-digit ZIP Codes. Within each tray, the pieces must be separated into groups of 100 pieces. Groups of 100 must be separated by separator cards. When the tray is full, no further preparation is required. When the tray is less than full, pieces must also be rubber-banded into packages approximately 4 inches thick within the group 100 separations. When there are less than 100 pieces in a group at the end of the last tray for either of the two types of trays (those containing pieces with correct ZIP+4 Codes and those containing pieces with correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces bearing ZIP+4 Codes and the total number of pieces bearing 5-digit ZIP Codes must be added to the summary portion of the documentation required in 562.521c or 562.522c. Residual trays must be labeled as follows:

(1) *Trays Containing ZIP+4 Coded Pieces*

Line 1: The word "RESIDUAL".
Line 2: FCM ZIP+4.
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP BIGFOOT TX

(2) *Trays Containing Pieces Not ZIP+4 Coded*

Line 1: The word "RESIDUAL".
Line 2: FCM.
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM
XYZ CORP BIGFOOT TX

562.5 Documentation

562.51 When Not Required

[Insert current text of 562.61.]

562.52 Information Required

562.521 Tray Label Option

a. Sequence. [Insert the existing text of 562.621a. Replace the last sentence of existing 562.621a with the following: "In the 5-digit portion, the contents of each tray must be detailed by 5-digit ZIP Code, and, in both the 3-digit portion and the SCF portion, by 3-digit ZIP Code prefix. For First-Class mailings having residual pieces prepared in accordance with 562.42a, the documentation must also show a residual section that is listed by unique tray number or the exact top line of the tray label and the contents of residual trays must be detailed by 3-digit ZIP Code prefix."]

b. Information. [Insert the existing text of 562.621b. In the second sentence of this section change the phrase "For 3-digit and SCF trays," to "For 3-digit and SCF trays (and for First-Class residual trays prepared in accordance with 562.42a),".]

c. Summary. [Insert the existing text of 562.621c; change the reference "561.23" to "562.322".]

d. Tray Preparation. [Insert existing text of 562.621d.]

562.522 ZIP Code Option

a. Sequence. [Insert the existing text of 562.22a; replace the last sentence with the following: "In the 5-digit portion, the entries must be listed by 5-digit ZIP Code, and in both the 3-digit portion and the SCF portion, by 3-digit ZIP Code prefix. For First Class mailings having residual pieces prepared in accordance with 562.42a, the documentation must also show a residual level of sortation. The contents of First-Class residual trays must be listed by 3-digit ZIP Code prefix."]

b. Information. [Insert existing text of 562.622b.]

c. Summary. [Insert existing text of 562.622c; change the reference "561.23" to "562.322".]

d. Tray Preparation. [Insert existing text of 562.622d.]

PART 563—PRESORTED ZIP+4 BARCODED MAIL

11. Delete current 563 and insert new 563.1 to read as follows:

563 Presorted ZIP+4 Barcoded Mail

563.1 Tray-Based Preparation Requirements

563.11 Required Percentage of ZIP+4 Barcoded Pieces

563.111 Eighty-Five Percent Requirement for the Entire Mailing

At least 85 percent of the total number of pieces in a tray-based ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode or correct delivery point (11-digit) barcode prepared as required by 530 and 550. All pieces must also bear the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.112 One-Hundred Percent Requirement for the Pieces in 5-Digit Trays

Each piece placed in a 5-digit tray must bear the correct ZIP+4 barcode or correct delivery point (11-digit) barcode prepared as required by 530 and 550. Each piece must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

Note: 5-digit trays are optional, and need be prepared only if the mailer wishes to qualify pieces for the 5-digit ZIP+4 Barcoded rates.

563.12 Rate Eligibility

563.121 First-Class Mail

a. Five-Digit Trays. In 5-digit trays, each piece may qualify for the 5-digit ZIP+4 Barcoded rate. 5-digit trays must be full trays (see 561.22) or overflow trays (see 563.132b) and must be 100 percent ZIP+4 barcoded or delivery point barcoded in accordance with the requirements of 551.

b. 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the 3-digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the Presorted First-Class rate if they bear a correct 5-digit numeric ZIP Code in the address. In SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code destination. Three-digit and SCF trays must be full trays (see 561.22) or overflow trays (see 563.132b).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the nonpresorted ZIP+4 Barcoded rate if the pieces are eligible for the card rates, or the nonpresorted ZIP+4 rates if the pieces are other than cards. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the nonpresorted ZIP+4 rate if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the single piece First-Class rate if they bear a correct numeric 5-digit ZIP Code in the address.

563.122 Second-Class Mail

a. Five-Digit Trays. In 5-digit trays, each piece may qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. 5-digit trays must be full trays (see 561.22) or overflow trays (see 563.132b) and must be 100 percent ZIP+4 barcoded or delivery point barcoded.

b. Three-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the level B3/H3/J3 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the level B3/H3/J3 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level B/H/J presort rates if they bear a correct 5-digit numeric Zip Code in the address. Three-digit and SCF trays must be full trays (see 561.22) or overflow trays (see 563.132b).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the level A/G/J1 ZIP+4 Barcoded rates. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the level A/G/J1 ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level A/G/J presort rates if they bear a correct numeric 5-digit ZIP Code in the address.

563.123 Third-Class Mail

a. Five-Digit Trays. In 5-digit trays, each piece may qualify for the 5-digit ZIP+4 Barcoded rates. 5-digit trays must be full trays (see 561.22) or overflow trays (see 563.132b) and must be 100 percent ZIP+4 barcoded or delivery point barcoded.

b. Three-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the 3-digit ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the 3/5 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the 3/5 presort rates if they bear a correct 5-digit numeric ZIP Code in the address. Three-digit and SCF trays must be full trays (see 561.22) or overflow trays (see 563.132b).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the basic ZIP+4 Barcoded rates. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the basic ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the basic presort rates if they bear a correct numeric 5-digit ZIP Code in the address.

563.13 Sortation Requirements

563.131 Facing, ZIP Code Grouping, and Packaging of Pieces in Trays

a. Facing. All the pieces in each tray in the mailing must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

b. ZIP Code Grouping and Packaging

(1) Five-Digit and 3-Digit Trays

(a) Full Trays. There are no ZIP Code grouping requirements in 5-digit and 3-digit trays. Packaging is not permitted in full 5-digit and 3-digit trays.

Note: Five-digit and 3-digit trays are required to be full (see 563.132d(1) and 563.132d(2)) except that less than full overflow trays are permitted as described in 563.132b.

(b) Overflow Trays. The pieces in overflow trays to 5-digit and 3-digit destinations as provided in 563.132b (overflow trays are less than full by definition) must be packaged to preserve their orientation, and labeled as either 5-digit packages or 3-digit packages as appropriate. See 563.131b(4) for further requirements on securing and labeling packages.

(2) SCF Trays

(a) First-Class Mailings

(i) Full Trays. There must be at least 50 pieces for each 3-digit ZIP Code area within SCF trays. The pieces for each 3-digit ZIP Code area within the tray must be grouped together. Packaging is not permitted in full SCF trays. SCF trays must be full (see 563.132d(3)) except for overflow trays as provided in 563.132b.

(ii) Overflow Trays. The pieces in First-Class SCF overflow trays (overflow trays are less than full by definition) must be packaged to preserve their orientation. Such packages must contain mail for only one 3-digit ZIP Code area and must be labeled as a 3-digit package. See 563.131b(4) for further requirements on securing and labeling packages.

(b) Second- and Third-Class Mailings

(i) Full Trays. There is no minimum quantity requirement for individual 3-digit ZIP Code areas in SCF trays of second- and third-class mail. However, SCF trays must be full (except for overflow trays as provided in 563.132b.) Pieces for each 3-digit ZIP Code area contained within the tray must be grouped together. Packaging is not permitted in full SCF trays.

(ii) Overflow Trays. The pieces in second- and third-class SCF overflow trays (overflow trays are less than full by definition) must be packaged to preserve their orientation in the tray. Such packages must contain mail for only one 3-digit ZIP Code area and must be labeled as a 3-digit package. See 563.131b(4) for further requirements on securing and labeling packages.

(3) Residual Trays

(a) Prepared in Accordance with Option 1: ZIP Code Sequencing and Listing. Residual pieces that are prepared in accordance with 563.132e(1) (Option 1: ZIP Code Sequencing and Listing) must be placed in residual trays in 3-digit ZIP Code sequence. Pieces in less than full residual trays must be packaged to preserve their orientation. Such packages must contain mail for only one 3-digit ZIP Code area and be labeled as a 3-digit package. See 563.131b(4) for further requirements on securing and labeling packages.

(b) Prepared in Accordance with Option 2: Physical Separation. Residual pieces that are separately trayed as provided in 563.132e(2), (Option 2, Physical Separation) must be separated or packaged into groups of 100 pieces as described in 563.132e(2) and need not be sequenced and labeled by 3-digit ZIP Code area.

(4) General Requirements for Securing and Labeling Packages.

(a) Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(b) Labeling Packages. The top piece in each package must bear the red "D" (for 5-digit packages in 5-digit overflow trays) or the green "3" (for 3-digit packages in 3-digit and SCF overflow trays, and in residual trays) pressure sensitive package label in the lower left corner of the address side. Alternatively, the applicable 5-digit or 3-digit optional endorsement package label line may be used as specified in 369, 441.232, or 642.3.

563.132 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Volume per Tray and Preparation of Overflow Trays. Mailers should balance the volume in trays when more than one is prepared for the same destination to ensure that all are full (at least 3/4 full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight). If after this step, the remaining pieces for that destination are not enough to generate an additional full tray, they may be placed in an overflow tray that is less than full, provided the pieces in the overflow tray are packaged and labeled, and only one such tray for that destination is prepared in the mailing. (See 563.131b(4) for further requirements concerning packaging and labeling.) To allow accurate verification of the mailing by postal acceptance personnel, the mailer must provide a listing of all such trays prepared in addition to the documentation required by 563.14.

c. Size and Availability of Trays. Only standard 2-foot trays may be used to prepare tray-based ZIP+4 Barcoded rate mailings. The Postal Service will provide mailers with the trays.

d. Tray Sortation—Qualifying Pieces.

(1) Five-Digit Trays. [Insert existing text of 563.411; change the reference "561.23" to "563.132b". Change the tray label information to read as shown below:]

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

DETROIT MI 48235
FCM Z+4 BARCODED
NB COMPANY UNION SC

(2) Three-Digit Trays. [Insert existing text of 563.412; change the reference "561.23" to "563.132b." Change the tray label information to read as shown below.]

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C.".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C Z+4 BARCODED
ROCKET CO ROCHESTER NY

(b) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINIA VA 221
NEWS Z+4 BARCODED
ABC MAILING CO ROCHESTER NY

(3) SCF Trays. [Insert existing text of 563.413; change the reference "561.23" to "563.132b." Change the tray label information to read as shown below.]

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.

Line 2. Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
3C Z+4 B/C
DR PATERNO BIGFOOT TX

e. Tray Sortation—Residual Pieces. Residual pieces are those that cannot be trayed as required by 563.132d. Residual pieces must be placed in trays in one of the following ways:

(1) Option 1: ZIP Code Sequencing and Listing. Residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. Pieces in less than full residual trays must be packaged by 3-digit area and labeled as described in 563.131b(3)(a) and 563.131b(4). Mailers must provide a listing by 3-digit area of the various rate qualification categories as described in 563.142. Trays must be labeled as follows:

Line 1: Word "Residual" followed by the 3-digit ZIP Code range of the pieces in the tray.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS as appropriate) followed by the words "ZIP+4 BARCODED".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL 010–590
FCM ZIP+4 BARCODED
XYZ CORP BIGFOOT TX

(2) Option 2: Physical Separation. Residual pieces bearing ZIP+4 barcodes must be separately trayed from those residual pieces that do not. Pieces that do not bear ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code in the address are separately trayed from those pieces bearing a correct 5-digit ZIP Code in the address. Within each of the resulting trays, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator tabs. When the tray is full, nothing further is required. When the tray is less than full, pieces must also be rubber-banded into packages approximately 4 inches thick, within the group-100 separations. When there are less than 100 pieces in a group at the end of the last tray for any of the three types of trays (those containing the ZIP+4 barcoded or delivery point barcoded pieces, those containing the pieces with correct numeric ZIP+4 codes, and those containing pieces with correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces in each rate category must be added to the summary portion of the documentation required in 563.142. Option 2 Residual trays must be labeled as follows:

(a) Trays Containing ZIP+4 or Delivery Point Barcoded Mail

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS as appropriate) followed by the words "ZIP+4 BARCODED".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4 BARCODED
XYZ CORP AUSTIN TX

(b) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric ZIP+4 Code in the Address.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, OR 3C LTRS) followed by the words "ZIP+4".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP AUSTIN TX

(c) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric 5-Digit ZIP Code in the Address.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, OR 3C LTRS).

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM
XYZ CORP AUSTIN TX

563.14 Documentation

563.141 When Not Required.

[Insert text of existing 563.61; change the reference "561.23" to "563.132b".]

563.142 Information Required

a. Tray Label Option

(1) Sequence. [Insert text of existing 563.621a and add the following sentence at the end: "When residual mail is prepared in accordance with Option 1, ZIP Code Sequencing and Listing, set forth in 563.132e(1), the documentation must also show a residual section that is listed by unique tray number or the exact top line of the tray label and the contents of residual trays must be detailed by 3-digit ZIP Code prefix."]

(2) Information. [Insert text of existing 563.621b. In the second sentence, change the phrase "number of pieces with a ZIP+4 code" to "number of pieces with a ZIP+4 barcode". Add the following sentence at the end of this section: "For residual mail prepared in accordance with Option 1, ZIP Code Sequence and Listing, set forth in 563.132e(1), the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a ZIP+4 barcode and the total number of pieces in the tray.]

(3) Summary. [Insert text of existing 563.621c; change the reference "561.23" to "563.132b". Add the following as the second sentence of this section: "When Option 2, Physical Separation, in 563.132e(2), is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a ZIP+4 barcode from the hand-counted residual portion of the mailing.]

(4) Tray Preparation. [Insert text of existing 563.621d.]

b. ZIP Code Option

(1) Sequence. [Insert text of existing 563.622a and add the following sentence at the end: "When residual mail is prepared in accordance with Option 1, ZIP Code Sequencing and Listing, set forth in 563.132e(1), the documentation must also show a residual level of sortation. The contents of residual trays must be detailed by 3-digit ZIP Code prefix."]

(2) Information. [Insert text of existing 563.622b.]

(3) Summary. [Insert text of existing 563.622c. Add the following as the second sentence of this section: "When Option 2, Physical Separation, in 563.132e(2) is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a ZIP+4 barcode from the hand-counted residual portion of the mailing.]

(4) Tray Preparation. [Insert text of existing 563.622d.]

PART 563.2—PACKAGE-BASED PREPARATION REQUIREMENTS—5-DIGIT ZIP+4 BARCODED RATE MAILINGS

11. Add new part 563.2 as follows:

563.2 Package-Based Preparation Requirments—5-Digit ZIP+4 Barcoded Rate Mailings

563.21 One-Hundred Percent ZIP+4 Barcoded Requirement

All pieces in a 5-digit ZIP+4 Barcoded rate mailing prepared in accordance with 563.2 must bear a correct ZIP+4 barcode or delivery point (11-digit) barcode prepared as required by 530 and 550. In addition, each piece in the mailing must bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.22 Rate Eligibility

.221 First-Class Mailings

All pieces within the mailing may qualify for the 5-digit ZIP+4 Barcoded rate. (Only pieces containing a ZIP+4 barcode that are part of a group of 10 or more pieces for the same 5-digit ZIP Code area may be contained in the mailing.)

.222 Second-Class Mailings

All pieces within the mailing may qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. (Only pieces containing a ZIP+4 barcode that are part of a group of 10 or more pieces for the same 5-digit ZIP Code area may be contained in the mailing.)

.223 Third-Class Mailings

All pieces within the mailing may qualify for the 5-digit ZIP+4 Barcoded rate. (Only pieces containing a ZIP+4 barcode that are part of a group of 10 or more pieces for the same 5-digit ZIP Code area may be contained in the mailing.)

563.23 Sortation Requirements

563.231 Facing, Minimum Quantity Per 5-Digit Area, Grouping and Packaging Requirements

a. Facing. All pieces in each tray in the mailing must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

b. Minimum Quantity Per 5-Digit Area Requirements. There must be at least 10 pieces for each 5-digit ZIP Code area contained in the mailing. When there are fewer than 10 pieces for a 5-digit ZIP Code area, the pieces for that 5-digit area are not permitted within the mailing.◄

c. Grouping and Packaging Requirements.

(1) Full 5-Digit Trays. None.

(2) Full 3-digit and SCF Trays. Within full 3-digit and full SCF trays, the groups of pieces for each 5-digit ZIP Code area contained in the tray must be delineated by separator cards.

(3) Less Than Full SCF Trays. Within less than full SCF trays, the groups of pieces for each 5-digit ZIP Code area contained in the tray must be secured together into 5-digit packages. There must be at least 10 pieces for a 5-digit ZIP Code area in each package.

(a) Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(b) Labeling Packages. The top piece in each package must bear a red "D" pressure sensitive package label in the lower left corner of the address side, or the 5-digit optional endorsement package label line must be used to label the packages in accordance with 369, 441.232, or 642.3. Package labels are not required for 5-digit groups in full trays that are delineated by separator cards.

563.232 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Volume per Tray.

(1) Five-Digit and 3-Digit Trays. 5-digit and 3-digit trays must be full as described in 561.22.

(2) SCF Trays. SCF trays may be less than full. There is no minimum quantity other than the requirement that there be at least 10 pieces per 5-digit ZIP Code area as described in 563.231b.

c. Size and Availability of Trays. Two sizes of trays, 1-foot trays and standard 2-foot trays, may be used in package-based 5-digit ZIP+4 Barcoded rate mailings. The Postal Service provides mailers with standard 2-foot trays, which may be used for any presort level of tray in the mailing. One-foot trays (half-trays) may be used only for 5-digit trays and must be supplied by the mailer. One-foot (half-trays) must not be used for 3-digit or SCF trays. In order to meet Postal Service transportation and storage needs, the 1-foot trays and their sleeves must meet Postal Service specifications (see 563.232d for information on how to obtain the specifications).

d. Physical Specifications for 1-Foot Trays and Sleeves. Mailers may obtain copies of the specification for small letter tray and sleeve construction by writing to: Container & Material Handling Division, Engineering and Development Center, United States Postal Service, 8403 Lee Highway, Merrifield, VA 22082–8142, and by requesting the most recent specifications and drawings for DL–256874—Small Letter Tray, Model SMM and DL–256875—Sleeve, Small Letter Tray, Model SMMS.

e. Tray Sortation.

(1) Five-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited. Full 1-foot trays (half-trays) meeting Postal Service specifications (see 563.232c and 563.232d) may be used by mailers. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

DETROIT MI 48235
FCM 5DG Z+4 BARCODED
NB COMPANY UNION SC

(2) Three-Digit Trays. If, after preparing all possible full 5-digit trays, there are sufficient pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. Pieces for each 5-digit ZIP Code area within the tray must be delineated by separator tabs as set forth in 563.231c(2). Trays that are not full are prohibited. Trays must be labeled as follows:

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C."
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C 5DG Z+4 BARCODED
ROCKET CO ROCHESTER NY

(b) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINA VA 221
NEWS 5DG Z+4 BARCODED
ABC MAILING CO ROCHESTER NY

(3) SCF Trays

(a) Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 5-digit and full 3-digit trays, there are pieces remaining for an SCF that serves a single 3-digit area listed in Exhibit 122.63c, which are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. The minimum quantity of mail for a single 3-digit SCF tray is 10 pieces for a 5-digit ZIP Code area (see 563.231b). The pieces in the tray must be secured into packages for 5-digit areas as described in 563.231c(3). Trays must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by the 3-digit ZIP Code prefix of the pieces in the tray (see Exhibit 122.63c).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation to the mailer's location.

Example:

MID-FLORIDA FL 327
2C 5DG Z+4 BARCODED
BAKERSFIELD CA

(b) Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 5-digit and full 3-digit trays, there are sufficient pieces remaining to fill a tray for one of the SCFs that serve more than one 3-digit area in Exhibit 122.63d, an SCF tray must be prepared. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. Trays that are less than full may be prepared. The minimum quantity of mail for SCF trays is 10 pieces for a 5-digit ZIP Code area (see 563.231b). Groups of 10 or more pieces per 5-digit ZIP Code area within SCF trays must be delineated by separator cards in full trays, and packaged in less than full trays as described in 563.231c(3). If the tray contains pieces for only one 3-digit ZIP code area served by the SCF, the tray must be labeled as a 3-digit tray in accordance with 563.232e(2). If the tray contains pieces for only one 5-digit ZIP Code area served by the SCF, the tray must be labeled as a 5-digit tray in accordance with 563.232e(1). Trays containing pieces for multiple 3-digit areas served by the SCF must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
3C 5DG Z+4 B/C
DR PATERNO BIGFOOT TX

563.24 Documentation Requirements

None.

PART 563.3—PACKAGE-BASED PREPARATION REQUIREMENTS—3-DIGIT AND BASIC (OR NONPRESORTED FIRST-CLASS) ZIP+4 BARCODED RATE MAILINGS

12. Add new part 563.3 as follows:

563.3 Package-Based Preparation Requirements—3-Digit and Basic (or Nonpresorted First-Class) ZIP+4 Barcoded Rate Mailings

563.31 Eighty-Five Percent requirement

At least 85% of the total number of pieces in a 3-digit and basic ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode or correct delivery point (11-digit) barcode prepared as required by 530 and 550. All pieces must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.32 Rate Eligibility

563.321 First-Class Mail

a. Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode, are within a group of 50 or more pieces for a 3-digit ZIP Code area, and are placed in a 3-digit tray or in an SCF tray, may qualify for the 3-Digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode, but that are within a group of 50 or more pieces for a 3-digit ZIP Code area and are placed in a 3-digit tray or an SCF tray, may qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the Presorted First-Class rate if they bear a correct 5-digit numeric ZIP Code in the address. Three-digit trays must be full trays as defined in 561.22 and must contain at least 50 pieces.

b. Residual Pieces. Residual pieces are those that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area. Residual pieces prepared with correct ZIP+4 barcodes or correct delivery point barcodes may qualify for the nonpresorted ZIP+4 Barcoded rates if they meet the requirements for the card rates (see 311.11, 322, and 328), otherwise they may qualify for the nonpresorted ZIP+4 rate. Residual pieces that do not bear ZIP+4 barcodes or delivery point barcodes may qualify for the nonpresorted ZIP+4 rate if they bear the correct numeric ZIP+4 code in

the address and meet the requirements of 540, and may qualify for the single-piece First-Class rates if they bear a correct 5-digit numeric ZIP Code in the address. Residual pieces must be either packaged and placed in SCF trays with qualifying pieces as described in 563.331c(2)(a) and 563.332e(1), or separately trayed as described in 563.331c(2)(b) and 563.332e(2).

563.322 Second-Class Mail

a. Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode, are within a group of 50 or more pieces for a 3-digit ZIP Code area, and are placed in a 3-digit tray or an SCF tray, may qualify for the level B3/H3/J3 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or a delivery point barcode, but that are within a group of 50 or more pieces for a 3-digit ZIP Code area placed in a 3-digit tray or an SCF tray, may qualify for the level B3/H3/J3 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level B/H/J presort rates if they bear the correct 5-digit ZIP Code in the address. Three digit trays must be full trays as defined in 561.22 and must contain at least 50 pieces.

b. Residual (Basic Rate) Pieces. Residual pieces are those that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area. Residual pieces prepared with correct ZIP+4 barcodes or correct delivery point barcodes may qualify for the level A/G/J1 ZIP+4 Barcoded rates. Residual pieces that do not bear ZIP+4 barcodes or delivery point barcodes may qualify for the level A/G/J1 ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level A/G/J presort rates if they bear a 5-digit numeric ZIP+4 code in the address. Residual pieces must be either packaged and placed in SCF trays with qualifying pieces as described in 563.331c(2)(a) and 563.332e(1), or separately trayed as described in 563.331c(2)(b) and 563.332e(2).

563.323 Third-Class Mail

a. Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode, are within a group of 50 or more pieces for a 3-digit ZIP Code area, and are placed in a 3-digit tray or an SCF tray, may qualify for the 3-digit ZIP+4 Barcoded rate. Pieces that do not bear the correct ZIP+4 barcode or delivery point barcode, but that are within a group of 50 or more pieces for a 3-digit ZIP Code area and are placed in a 3-digit tray or an SCF tray, may qualify for the 3/5 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the 3/5 Presort rates if they bear the correct 5-digit ZIP Code in the address. Three digit trays must be full trays as defined in 561.22 and must contain at least 50 pieces.

b. Residual (Basic Rate) Pieces. Residual pieces are those that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area. Residual pieces prepared with correct ZIP+4 barcodes or correct delivery point barcodes may qualify for the Basic ZIP+4 Barcoded rates. Residual pieces that do not bear ZIP+4 barcodes or delivery point barcodes may qualify for the basic ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the basic presort rates if they bear a correct numeric 5-digit ZIP Code in the address. Residual pieces must be either packaged and placed in SCF trays with qualifying pieces as described in 563.331c(2)(a) and 563.332e(1), or separately trayed as described in 563.331c(2)(b) and 563.332e(2).

563.33 Sortation Requirements (3-Digit and Basic ZIP+4 Barcoded Rates—Package Based Preparation)

563.331 Facing, Minimum Quantity Per 3-Digit Area, Grouping and Packaging Requirements.

a. Facing Requirements. The pieces in all trays must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

b. Grouping and Packaging Requirements for 3-Digit Trays. There are no grouping or packaging requirements. However there must be at least 50 pieces for each 3-digit ZIP Code area and trays must be full as required in 561.22 and 563.332d(1).

c. Grouping and Packaging Requirements for SCF Trays.

(1) Qualifying Groups of 50 or More Pieces Per 3-Digit ZIP Code Area. In full SCF trays, the pieces in each group of 50 or more pieces per 3-digit ZIP Code area must be grouped together. In less than full SCF trays, each group of 50 or more pieces to a 3-digit ZIP Code area must be secured together as a package and labeled. See 563.331d for further requirements on securing the labeling packages.

(2) Residual Pieces Prepared under Option 1: Trayed With Qualifying Mail. Residual pieces (those that cannot be placed in a group of 50 or more pieces for the same 3-digit ZIP Code area) that are placed in SCF trays as described in 563.332e(1) must also be packaged by 3-digit ZIP Code area and labeled as 3-digit packages. See 563.331d for further requirements on securing the labeling packages.

Note: Residual pieces that are separately trayed as provided in 563.332e(2), (Option 2, Physical Separation) must be separated or packaged into groups of 100 pieces as described in 563.332e(2) and need not be grouped and labeled by 3-digit ZIP Code area.

d. General Requirements for Securing and Labeling Packages.

(1) Securing Packages. Each package must contain mail for the same 3-digit ZIP Code area. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness in 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(2) Labeling Packages. The top piece in each package of qualifying or residual mail within less than full SCF trays must bear the green "3" sensitive package label in the lower left corner of the address side, or the applicable optional endorsement package label line as specified in 369, 441.232, or 642.3.

563.332 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Volume Per Tray.

(1) Three-Digit Trays. Three-digit trays must be full as described in 561.22 and 563.332d(1). They must also contain a minimum of 50 pieces.

(2) SCF Trays. SCF trays may be less than full. They may contain as little as one piece of mail if the tray contains only residual pieces (see 563.322d(2)). However, trays containing qualifying pieces must contain at least 50 pieces for a 3-digit ZIP Code area (see 563.32 and 563.322d(2)).

c. Size and Availability of Trays. Two sizes of trays, 1-foot trays and standard 2-foot trays, may be used in packaged-based 3-digit and basic ZIP+4 Barcoded rate mailings. The Postal Service provides mailers with standard 2-foot trays, which may be used for any presort level of tray in the mailing. One-foot trays (half-trays) may be used only for 3-digit trays and must be supplied by the mailer. One-foot trays must not be used for SCF trays. In order to meet Postal Service transportation and storage needs, the 1-foot trays and their sleeves must meet Postal Service specifications (see 563.232d for information on how to obtain the specifications).

d. Tray Sortation for the Qualifying Portion.

(1) Three-Digit Trays. When there are sufficient pieces for the same 3-digit ZIP Code area to fill a tray, a 3-digit tray must be prepared. Each 3-digit tray must contain at least 50 pieces. Trays that are not full are prohibited. Full 1-foot trays meeting and requirements of 563.332c and 563.232d may be used by mailers. Trays must be labeled as follows:

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C 3DG Z+4 BARCODED
ABC CO ROCHESTER NY

(b) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINIA VA 221
NEWS 3DG Z+4 BARCODED
ABC MAILING CO ROCHESTER NY

(2) SCF Trays

(a) SCF Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 3-digit trays, there are pieces remaining for an SCF that serves a single 3-digit area listed in Exhibit 122.63c, that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. The minimum quantity of mail for a single 3-digit SCF tray is 50 pieces (see 563.331c(1)), except that single 3-digit SCF trays containing only residual (basic rated) pieces may contain fewer than 50 pieces—see 563.332e(1)). The pieces in the tray must be secured into packages for 3-digit areas and labeled as described in 563.331c and 563.331d. Single 3-digit SCF trays must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by the 3-digit ZIP Code prefix of the pieces in the tray (see Exhibit 122.63c).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

MID-FLORIDA FL 327
2C 3DG Z+4 BARCODED
NBT CO BAKERSFIELD CA

(b) SCF Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 3-digit trays, there are sufficient pieces remaining to fill a tray for one of the SCFs listed in Exhibit 122.63d, that serve more than one 3-digit area, an SCF tray must be prepared. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. Trays that are less than full may be prepared. The minimum quantity of mail for an SCF tray is 50 pieces (see 563.331c(1)), except that SCF trays containing only residual (nonpresorted First-Class or basic rated second- and third-class) pieces may contain fewer than 50 pieces (see 563.332e(1)). Groups of 50 or more pieces per 3-digit ZIP Code area must be grouped together in full trays; and packaged and labeled in less than full trays as specified in 563.331c(1) and 563.331d. If the tray contains pieces for only one 3-digit ZIP code areas served by the SCF, the tray must be labeled as if it were a 3-digit tray as specified in 563.332d(1). Trays containing pieces for multiple 3-digit area served by the SCF must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
FCM 3DG Z+4 BARCODED
ABC CO PHILADELPHIA PA

e. Tray Sortation Requirements for the Residual (Basic-Rated) Portion. Mailers must prepare residual pieces in one of the following two ways.

(1) Option 1: Trayed With Qualifying Mail. Residual pieces (those that cannot be placed in a full 3-digit tray and are not part of a group of 50 or more pieces for a 3-digit area) must be packaged and labeled by a 3-digit ZIP Code area (see 563.331c(2) and 563.331d) and placed in an SCF tray. Residual 3-digit packages must be placed in SCF trays containing qualifying 3-digit pieces (groups of 50 or more pieces per 3-digit ZIP Code area) wherever possible. Where there is no SCF tray containing qualifying 3-digit mail, and SCF tray containing only a residual piece, package, or packages must be prepared. Residual SCF trays must be prepared and labeled in the same way as trays containing qualifying 3-digit mail as described in 563.332d(1).

(2) Option 2: Physical Separation. Residual pieces bearing ZIP+4 barcodes or delivery point barcodes must be separately trayed from those residual pieces that do not. Pieces that do not bear ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code in the address are separately trayed from those pieces bearing a correct 5-digit ZIP Code in the address. Within each of the resulting trays, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delinated by separator tabs. When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages approximately 4 inches thick, within the group-100 separations. When there are less than 100 pieces in a group at the end of the last tray for any of the three types of trays (those containing the ZIP+4 barcoded or delivery point barcoded pieces, those containing the pieces with correct numeric ZIP+4 codes, and those containing pieces with

correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces in each rate category must be added to the summary portion of the documentation required in 563.343. Option 2 Residual trays must be labeled as follows:

(a) Trays containing ZIP+4 or Delivery Point Barcoded Mail.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS as appropriate) followed by the words "ZIP+4 BARCODED".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4 BARCODED
XYZ CORP AUSTIN TX

(b) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric ZIP+4 Code in the Address.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by the words "ZIP+4".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example.

RESIDUAL
FCM ZIP+4
XYZ CORP AUSTIN TX

(c) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric 5-Digit ZIP Code in the Address.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, OR 3C LTRS).

Line 3: Name of the mailer and the city and tow-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM
XYZ CORP AUSTIN TX

563.34 Documentation Requirements

563.341 When Not Required

Documentation is not required when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and each piece in the mailing has postage affixed at the exact rate of postage for which it qualifies.

563.342 Mailings Utilizing Option 1–SCF Trays, for Residual (Basic Rated) Pieces

a. Listing. Mailers must list by 3-digit ZIP Code:

(1) The number of ZIP+4 barcoded pieces or delivery point barcoded pieces that qualify for the First-Class 3-digit ZIP+4 Barcoded rates, the second-class level B3/H3/J3 ZIP+4 Barcoded rates, or the third-class 3-digit ZIP+4 Barcoded rates. (This is the number of ZIP+4 or delivery point barcoded pieces that are in a group of at least 50 pieces for the same 3-digit ZIP Code area within 3-digit and SCF trays.)

(2) The number of ZIP+4 barcoded or delivery point barcoded pieces that qualify for the First-Class Nonpresorted Barcoded rate (if qualified for the card rate) or the Nonpresorted ZIP+4 rates (if other than a card), the second-class level A/G/J1 ZIP+4 Barcoded rates, or the third-class basic ZIP+4 Barcoded rates. (This is the number of ZIP+4 barcoded or delivery point barcoded pieces within residual packages.

(3) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class ZIP+4 Presort Rate, the second-class level B3/H3/J3 ZIP+4 rates; or the third-class 3/5 ZIP+4 rates. (The number of pieces in groups of 50 or more pieces in 3-digit and SCF trays, that do not bear a ZIP+4 barcode or a delivery point barcode but contain a numeric ZIP+4 code in the address.)

(4) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the Presorted First-Class rates, the second-class B/H/J presort rates, or the third-class 3/5 Presort rates. (This is the number of pieces without a ZIP+4 or delivery point barcode, bearing a 5-digit numeric ZIP Code in the address, that are in a group of at least 50 pieces for a 3-digit ZIP code area within 3-digit and SCF trays.)

(5) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class Nonpresorted ZIP+4 rates; the second-class level A/G/J1 ZIP+4 rates, or the third-class basic ZIP+4 rates. (This is the number of pieces without a ZIP+4 barcode or delivery point barcode, containing a correct numeric ZIP+4 code in the address, that are in residual packages.)

(6) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class single piece rates, the second-class A/G/J rates, or the third-class basic presort rates. (This is the number of pieces without a ZIP+4 or delivery point barcode, bearing a 5-digit numeric ZIP+4 code in the address that are in residual packages.)

(7) A cumulative total. This is the total of all pieces listed in (1) through (6) for the particular 3-digit area plus all the pieces listed for preceding 3-digit areas.

b. Totals. The total number of pieces in each of rate category listings 563.342a(1) through 563.342a(6) must be shown following the entries for the last 3-digit ZIP area in the mailing.

c. Summary. (1) Second-Class Mailings and Permit Imprint Mailings. Mailers must show the total number of pieces in each rate category in the mailing. For each rate category, compute the postage charges at the applicable rate by multiplying the total number of pieces by the applicable rate of postage. Add the total amounts of postage charges for each rate category to show the total amount of postage to be deducted from either the second-class account or the third-class permit imprint account. Also summarize for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode or delivery point barcode and the total number of pieces that do not. Show the percentage of ZIP+4 or delivery point barcoded pieces in the mailing.

(2) First- and Third-Class Metered and Precanceled Stamp Mailings. Mailers must show the total number of pieces in each rate category in the mailing. For each rate category, multiply the total number of pieces by the additional postage due per piece for that rate category. This will show the total postage due for each rate category in the mailing. Add the total amounts of postage due for each rate category to show the total amount of postage due. Also summarize, for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode and the total number of pieces that do not. Show the percentage of ZIP+4 barcoded pieces in the mailing.

563.343 Documentation for Mailings Utilizing Option 2-Physical Separation, for Residual (Nonpresort Rated or Basic Rated) Pieces

a. Listing. Mailers must list by 3-digit ZIP Code:

(1) The number of ZIP+4 or delivery point barcoded pieces that qualify for the First-Class 3-digit ZIP+4 Barcoded rate, the second-class level B3/H3/J3 ZIP+4 Barcoded rates, or the third-class 3-digit ZIP+4 Barcoded rate. (This is the number of ZIP+4 or delivery point barcoded pieces that are in a group of at least 50 pieces for the same 3-digit ZIP Code area within 3-digit and SCF trays.)

(2) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class ZIP+4 Presort rate, the second-class level B3/H3/J3 ZIP+4 rates, or the third-class 3/5 ZIP+4 rates. (This is the number of pieces in groups of 50 or more pieces in 3-digit and SCF trays, that do not bear a ZIP+4 barcode or a delivery point barcode, but contain a correct numeric ZIP+4 code in the address.)

(3) The number of pieces not bearing a ZIP+4 or delivery point barcode that qualify or the First-Class Presorted First-Class rates, the second-class level B/H/J presort rates, or the third-class 3/5 Presort rates. (This is the number of pieces in a group of at least 50 pieces for a 3-digit ZIP Code area within 3-digit and SCF trays that do not bear a ZIP+4 or delivery point barcode but contain a correct 5-digit numeric ZIP Code in the address.)

(4) A cumulative total. This is the total of all pieces listed for the particular 3-digit area plus all the pieces listed for preceding 3-digit areas.

b. Totals. The total number of pieces in each of the rate category listings in 563.343a(1) through 563.343a(3) must be shown following the entries for the last 3-digit ZIP Code area in the mailing.

c. Summary. (1) Second-Class Mailings and Permit Imprint Mailings. Mailers must show the total number of pieces in each rate category in the mailings as follows: The total number of ZIP+4 or delivery point barcoded pieces from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric ZIP+4 code from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric 5-digit ZIP Code from the 3-digit listing; the total number of pieces that contain a ZIP+4 or delivery point barcode from the residual portion of the mailing (563.332e(2)(a)); the total number of pieces that do not contain a ZIP+4 barcode or delivery point barcode and bear a numeric ZIP+4 code from the residual portion of the mailing (563.332e(2)(b)); and the total number of residual pieces that do not contain a ZIP+4 or delivery point barcode but bear a numeric 5-digit ZIP Code from the residual portion of the mailing (563.332e(2)(c)).

For each rate category listed above, compute the postage charges at the applicable rate by multiplying the total number of pieces by the applicable rate of postage. Add the total amounts of postage charges for each rate category to show the total amount of postage to be deducted from the second-class account or the permit imprint account. Also summarize for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode or delivery point barcode and the total number of pieces that do not. Show the percentage of ZIP+4 barcode or delivery point barcoded pieces in the mailing.

(2) First- and Third-Class Metered and Precanceled Stamp Mailings. Mailers must show the total number of pieces in each rate category in the mailing as follows: The total number of ZIP+4 or delivery point barcoded pieces from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric ZIP+4 code from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric 5-digit ZIP Code from the 3-digit listing; the total number of pieces that contain a ZIP+4 or delivery point barcode from the residual portion of the mailing (563.332e(2)(a)); the total number of pieces that do not contain a ZIP+4 barcode or delivery point barcode and bear a numeric ZIP+4 code from the residual portion of the mailing (563.332e(2)(b)); and the total number of residual pieces that do not contain a ZIP+4 or delivery point barcode but bear a numeric 5-digit ZIP Code from the residual portion of the mailing (563.332e(2)(c)).

For each rate category listed above, multiply the total number of pieces by the additional postage due per piece for that rate category. This will show the total postage due for each rate category in the mailing. Add the total amounts of postage due for each rate category to show the total amount of postage due. Also summarize, for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode or delivery point barcode and the total number of piece that do not. Show the percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing.

13. Add a new part 563.4 as follows.

563.4 Package-Based Preparation Requirements—Single Mailings Containing Pieces Qualifying for Both 5-Digit and 3-Digit ZIP+4 Barcoded Rates

563.41 General

Mailers may submit mail prepared in accordance with 563.2 and 563.3 at the same time as one mailing provided all the provisions of 563.42 through 563.45 are met.

563.42 Minimum Quantity Per Mailing Requirement

For First-Class Mail only one minimum quantity requirement (500 pieces) need be met for the entire mailing (both the 5-digit and 3-digit ZIP+4 Barcoded rate portions together). For third-class mail only one minimum quantity requirement of 200 pieces or 50 pounds of mail need be met for the entire mailing (both the 5-digit and 3-digit ZIP+4 Barcoded rate portions together).

Note: Second-Class is unaffected as there is no minimum quantity per mailing requirement for second-class

563.42 Percentage of Barcoded Pieces

All pieces in the 5-digit Barcoded rate portion of the mailing prepared in accordance with 563.2 must bear the correct ZIP+4 barcode or delivery point barcode as required in 563.21. For purposes of meeting the 85% ZIP+4 barcoded or delivery point barcoded requirements of 563.31, for the 3-digit Barcoded rate portion of the mailing, the total number of pieces in the 5-digit Barcoded rate portion of the mailing prepared in accordance with 563.2 may be counted towards the total number of ZIP+4 barcoded or delivery point barcoded pieces in the mailing, provided the additional documentation requirements of 563.45 are met.

563.43 Rate Eligibility

Pieces in the 5-digit Barcoded rate portion of the mailing will qualify for postage rates as described in 563.22 and pieces in the 3-digit Barcoded rate portion of the mailing will qualify for postage rates as described in 563.32.

563.44 Sortation Requirements

Pieces in the 5-digit Barcoded rate portion of the mailing must be sorted in accordance with 563.23 and pieces in the 3-digit Barcoded rate portion of the mailing must be sorted in accordance with 563.33.

563.45 Documentation Requirements

563.451 When Documentation is Not Required

Documentation is not required when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and each piece in the mailing has postage affixed at the exact rate of postage for which it qualifies.

563.452 When Documentation is Required

Mailers must provide the following information with each mailing.

a. Information Required for 5-Digit Portion Sorted in Accordance with 563.23. (1) Mailings of Identical Weight Pieces. Mailers must physically separate the trays containing mail sorted to 5-digits in accordance with 563.23 from trays containing mail sorted in accordance with 563.33 when presented to the post office for acceptance, so that the number of pieces reported on the mailing statement at the 5-digit Barcoded rate may be verified by weighing. Alternatively, the listing in 563.452a(2) below may be provided.

(2) Mailings of Non-identical Weight Pieces. Mailers must list by 5-digit ZIP Code the number of pieces that qualify for the First-Class 5-digit ZIP+4 Barcoded rates, the second-class level B5/H5/J5 ZIP+4 Barcoded rates, or the third-class 5-digit ZIP+4 Barcoded rates.

b. Information Required for 3-digit and Basic (or Nonpresorted First-Class) Portion Sorted in Accordance with 563.33. The portion of the mailing sorted in accordance with 563.33 must be listed and totaled in accordance with 563.342a and 563.342b, or in accordance with 563.343a and 563.343b, as applicable for the method used to document residual pieces.

c. Summary. The total number of ZIP+4 barcoded or delivery point barcoded pieces in the 5-digit portion of the mailing must be included in the summary portion of the documentation that is required by 563.342c or 563.343c as applicable for the method used to document residual pieces.

563.46 Mailing Statement

One mailing statement may be submitted reflecting pieces paid in both the 5-digit and 3-digit portions of the mailing.

14. Revise 580 to read as follows:

580 Postage Payment

[Insert existing text of 580. Add the following sentence: Mailers must annotate the mailing statement required to be submitted with each mailing with the appropriate Chapter 5 section number under which the mailing was prepared (562, 563.1, 563.2, 563.3, or 563.4 as appropriate). This section number must be written in the upper right corner of the front side of the mailing statement.

PART 660—PAYMENT OF POSTAGE

15. Revise 660 as follows:

661 Method of Payment

* * * * *

661.3 Bulk Mailings at ZIP+4 and ZIP+4 Barcoded Rates

661.31 Permit Imprint

See 145.

661.311 Identical-Weight Pieces

Identical-weight mailings may have postage paid by means of permit imprint. Mailings at the 3/5 ZIP+4, basic ZIP+4, 5-digit ZIP+4 barcoded, 3-digit ZIP+4 barcoded, and basic ZIP+4 barcoded must be accompanied by the documentation required in 624.446, 624.546, and 624.645, or, if Chapter 5 preparation is used by 562.5, 563.14, 563.24, 563.34, or 563.45.

* * * * *

661.32 Meter Stamps

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661.322 Correct Postage Affixed to Each Piece

a. 3/5 ZIP+4 and Basic ZIP+4 Mailings. Pieces qualifying for the 3/5 ZIP+4 rate, the 3/5 presort rate, the basic ZIP+4 rate, and basic presort rate are each metered at the rate for which they qualify: See 624.24, 628.13 and 628.24, for documentation requirements, or if chapter 5 is used, 562.5.

b. ZIP+4 Barcoded Mailings. Pieces qualifying for the 5-digit ZIP+4 Barcoded rate, the 3-digit ZIP+4 Barcoded rate, the basic ZIP+4 Barcoded rate, the 3/5 ZIP+4 rate, the 3/5 presort rate, the basic ZIP+4 rate, and the basic presort rate are each metered at the rate for which they qualify. (See 624.24, 628.13, and 628.34, for documentation requirements, or if chapter 5 is used, 563.14, 563.24, 563.34, or 563.45.)

Note: Only pieces eligible for the 5-digit ZIP+4 Barcoded rate are permitted in mailings under 563.2.

661.323 Lowest Rate in the Mailing Affixed to Each Piece

a. 3/5 ZIP+4 and Basic ZIP+4 Mailings. All pieces may have metered postage affixed at the 3/5 ZIP+4 rate. Additional postage for pieces subject to the basic presort rate must be determined from the documentation required to be submitted with each mailing as specified in 624.24, 628.13, 628.24, or if chapter 5 is used, 562.5. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, Post Office Accounting Procedures, 524.

b. ZIP+4 Barcoded Mailings. (1) Mailings Prepared in Accordance With 628.1, 628.3, 563.1, or 563.4. All pieces may have metered postage affixed at the 5-digit ZIP+4 Barcoded rate. Additional postage for pieces subject to the 3-digit Barcoded rate, Basic Barcoded rate, 3/5 ZIP+4 rate, 3/5 presort rate, Basic ZIP+4 rate, and basic presort rate, must be determined from the documentation required to be submitted with each mailing as specified in 624.24, 628.13, and 628.34, or as specified in 563.14 or 563.45. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, Post Office Accounting Procedures, 524.

(2) 5-Digit ZIP+4 Barcoded Mailings Prepared in Accordance With 563.2. Each piece in the mailing must have postage affixed at the 5-digit ZIP+4 Barcoded rate.

(3) 3-Digit and Basic ZIP+4 Barcoded Mailings Prepared in Accordance With 563.3. All pieces may have metered postage affixed at the 3-digit ZIP+4 Barcoded rate. Additional postage for pieces subject to the 3/5 ZIP+4 rate, 3/5 presort rate, Basic Barcoded rate, Basic ZIP+4 rate, and basic presort rate, must be determined from the documentation required to be submitted with each mailing as specified in 563.34. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F–1, Post Office Accounting Procedures, 524.

661.324 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

a. General. [Add the following to the end of this section:]

Exception: 5-digit ZIP+4 Barcoded rate mailings prepared with meters under 563.2 must have postage affixed to each piece in the mailing at the 5-digit ZIP+4 Barcoded rate, unless refund for postage added procedures are followed as described in 147.42, or if precanceled stamps of the same denomination are used for identical weight mailings.

661.33 Precanceled Stamps or Precanceled Stamped Envelopes

[Insert text of existing 661.33. Add the following note.]

Note: Precanceled stamp mailings at the 5-digit ZIP+4 barcoded rate prepared in accordance with 563.2 may have less than the 5-digit ZIP+4 Barcoded rate postage affixed (i.e., at the applicable rate of postage shown on the non-denominated precanceled stamp), provided each piece in the mailing is of identical weight.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

J. Fred Eggleston,

Deputy General Counsel.

[FR Doc. 91-14988 Filed 6-24-91; 8:45 am]

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federal register

Tuesday
June 25, 1991

Part VII

Department of Education

Inviting Applications for New Awards Under the Research in Education of Individuals With Disabilities Program for Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Inviting Applications for New Awards Under the Research in Education of Individuals With Disabilities Program for Fiscal Year 1991

Purpose: To advance and improve the knowledge base and improve the practice of professionals, parents, and other providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide those children effective instruction and enable them to successfully learn.

Awards under this competition are to provide support for one or more centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder (ADD) as required by the Education of the Handicapped Act Amendments of 1990.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Deadline for Transmittal of Applications. July 31, 1991.

Applications Available: June 27, 1991.

Available Funds: $600,000.

Estimated Average Size of Award: $150,000.

Estimated Number of Awards: 4.

Project Period: up to 18 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 324.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priority as published in the **Federal Register** on April 9, 1991 (56 FR 14432), because the Department's authority to obligate these funds will expire on September 30, 1991.

The public comment period for the notice of proposed priority ended on June 10, 1991. Four parties responded to the notice. The first commenter was strongly supportive of the proposed priority as written. The other three commenters, although generally supportive, included in their comments concerns or suggestions. The second commenter was concerned that these projects not "reinvent the wheel" given the limited amount of funding available, and the current existence of informatioin on ADD and its relation to public education. The Secretary agrees with the commenter that a significant body of information is currently available. The intent of the centers is to make that information accessible to the public, parents, and teachers involved with children and youth with ADD. These centers are designed to disseminate existing knowledge consistent with the commenters concern not to "reinvent the wheel."

The third commenter raised two issues. The first issue addressed by the commenter was a concern that most of the available "research" knowledge of ADD and "researchers" are in psychology and medicine, and not in education in general nor special education in particular. The commenter felt that research has mainly been done from the "perspective of clinical treatments and medical regimes", and not from an educational perspective. The commenter suggested that, in order to reinforce the educational perspective, the priority should use the terms "field educators and educational researchers" instead of "educators and researchers," and that perhaps some of the centers should focus on educational research or that some of the centers' directors should be educational researchers. The Secretary believes that to limit project staff and/or personnel according to their disciplinary training or professional affiliation would be overly prescriptive, and not supported by either the statute or the regulations. In addition, the selection criteria that will be used to evaluate applications under this competition provide for the peer reviewers to evaluate the "quality of key personnel" proposed by the project. This selection criterion requires reviewers to consider experience and training in fields related to the objectives of the project, as well as other evidence the applicant provides.

The second issue raised by this commenter concerned the perceived order of activities as outlined by the proposed priority. The commenter felt that educators, researchers, and parents needed to provide input on specific information needs before the identification of critical issues. As written, the priority provides that "Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the needs of children with ADD" (emphasis added).

The fourth commenter made several suggestions. With respect to the assessment centers, the commenters advised that they include the integration of newly proposed assessment criteria for the ADD population, and a critical review of the empirical data supporting various assessment instruments. The commenter stated that there are no pathognomonic or highly specific tests that can be used alone to establish the diagnosis of ADD. The Secretary notes that the intent of the priority is to synthesize current knowledge on assessment which includes classification and criteria techniques and systems, and reliable and valid instrumentation. The psychometric priorities of assessment instruments will be addressed in the synthesis.

The second suggestion regarding assessment centers was that the outcome of this effort should be to integrate current and future assessment tools into a comprehensive evaluation model that could be used in school settings. The Secretary believes that the priority as proposed provides for capturing existing knowledge and review of current assessment instruments that will assist and provide direction for future improvements.

The third suggestion made by this commenter regarding intervention centers was for an emphasis to be placed on integrating the family, educational, and medical perspectives so that comprehensive multi-modality forms of treatment are considered. The Department, in addition to these centers, is funding separate synthesis activities through a contract that will involve these centers in integrating these family, educational, and medical perspectives.

The final suggestion made by this commenter concerned examining the accuracy of data reported by school nurses and teachers, particularly in regard to medical interventions, and the exploration of academic and non-academic interventions. The Secretary believes that the priority, as written, provides for the centers to look at the full range of interventions being used to meet the needs of students with ADD.

Based on the comments received, no changes are expected in the final priority. However, because the Department's authority to obligate these funds will expire on September 30, 1991 cooperative agreements will no longer be specified as the type of award. Applicants are advised to submit their applications based on the priority as proposed. If changes are made in the final priority, applicants will be provided the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3524 –M/S 2640), Washington, DC 20202. Telephone: (202) 732–1099. (TDD: (202) 732–6153.)

Program Authority: 20 U.S.C. 1441–1443.

Dated: June 19, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–15012 Filed 6–24–91; 8:45 am]

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Tuesday
June 25, 1991

Part VIII

Department of Housing and Urban Development

24 CFR Part 24, et al.
Mortgagee Approval Reform and Direct Endorsement Expansion; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 24, 25, 200, 202, 203, 207, 213, 234

[Docket No. R-91-1506; FR 2854-P-01]

RIN 2501-AB16

Mortgagee Approval Reform and Direct Endorsement Expansion

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a comprehensive revision of the Department's regulations that prescribe the standards by which mortgagees are approved to participate in the HUD mortgage insurance programs, and by which approved mortgagees maintain their approval status. The proposed rule also would reorganize and update the Department's Direct Endorsement program requirements. The reforms proposed by this rule include increasing the net worth requirements of approved mortgagees, and improving the Secretary's ability to monitor the performance of approved mortgagees and to determine whether continued participation should be allowed. The purpose of the rule is to ensure that only responsible and soundly capitalized mortgagees are program participants. The specific revisions made by the proposed rule are more fully discussed in the Supplementary Information portion of this proposed rule.

DATES: Comment Due Date: August 26, 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. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: William M. Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1824. 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 is 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 Management and Budget, Office of Information and Regulatory Affairs, Attention HUD Desk Officer, room 3001, Washington, DC 20503.

Introduction

The National Housing Act requires that applications for HUD/FHA mortgage insurance be accepted only from approved mortgagees. It is essential to the strength and viability of the HUD mortgage insurance programs that approved mortgagees be responsible and adequately capitalized entities. The reforms proposed by this rule are directed toward this goal of ensuring that only responsible and adequately capitalized mortgagees are program participants.

A number of the proposed amendments concern the financial strength of the mortgagee. The Department believes that sound capitalization is a critical requirement for mortgagee approval. The Department's experience has demonstrated that an acceptable level of financial net worth generally assures an acceptable level of financial responsibility. The capital and liquidity levels proposed by this rule were developed after extensive analysis by the Department of the mortgage lending industry and of individual HUD approved mortgagees.

Review of the capital and liquidity requirements of private mortgage insurers, and other participants involved in the mortgage loan business, such as the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), indicate that these institutions generally have higher capital requirements than HUD. The capital and liquidity requirements for mortgagees as proposed by this rule are consistent with existing industry standards.

In order to determine the potential impact that the proposed net worth requirements may have on approved mortgagees, the Department analyzed the net worth of a random sample of 311 approved mortgagees which originated a minimum volume of 25 million dollars in loans (approximately 400 loans per mortgagee) during fiscal year (FY) 1989. The sample included 162 nonsupervised mortgagees and 149 supervised mortgagees. The Department also analyzed the current net worth of 200 loan correspondents randomly selected from a universe of 2,261 loan correspondents approved to originate loans in various HUD field offices. Of the nonsupervised mortgagees sampled, 80 percent (130 mortgagees) had a net worth of $500,000 or more. Under the proposed rule, lenders may adjust their net worth during the proposed two year phase-in period for the new net worth requirements or continue to participate as loan correspondents. With respect to supervised mortgagees, the proposed increase in net worth should not have any impact on their ability to maintain HUD approval. The average net worth of these mortgagee is approximately $2 million, far above the requirements of this proposed rule. The sample of loan correspondents disclosed that over 50 percent (102 mortgagees) have a net worth of $40,000 or more. Of these 102 mortgagees, 75 percent have a net worth in excess of $50,000 (76 mortgagees).

From a market share standpoint, the impact also should be minimal, as 93 percent of all HUD insured mortgages currently are processed under the Direct Endorsement program, which requires mortgagees to maintain a net worth of not less than $250,000.

The remaining amendments proposed by this rule are directed toward ensuring responsible performance by approved mortgagees, and strengthening the Department's ability to monitor such performance. The Department believes that the revisions proposed by this rule will raise the quality of performance by mortgagees participating in the HUD mortgage insurance programs, without excluding program participants who have performed well in the past.

The proposed rule also would reorganize and expand the regulations governing the single family Direct Endorsement program. Under the current Direct Endorsement program, approved mortgagees are authorized to underwrite and close mortgages without prior HUD review or approval. Over 90 percent of mortgages insured under the HUD mortgage insurance programs are processed under the Direct Endorsement program. The Department proposes to expand the Direct Endorsement program to virtually all of its single family insurance programs. The existing structure and organization of the Direct Endorsement regulations, as contained in part 200, would become too cumbersome under the proposed expansion of the Direct Endorsement program. Accordingly, the proposed rule would simplify the existing Direct Endorsement regulations by cross-referencing program requirements rather than restating them and by removing redundant language.

Approval Requirements

The Department proposes to revise part 202 to incorporate both (1) the approval requirements for title I lending institutions in a new subpart A; and (2) the approval requirements for single family and multifamily mortgagees in a new subpart B.

The new subpart A, which contains the revised approval requirements for title I lending institutions, is part of a separate proposed rule that was published for public comment on January 29, 1991 (56 FR 3302). The revised title I lender approval regulations and the revised mortgagee approval regulations proposed here are very close in both form and substance. In any final version of each regulation, the Department may make further changes to conform them, including making changes in one regulation which was specifically proposed only in the other regulation. For example, type 2 supervised mortgagees might also be eliminated for title I in the manner proposed here since there is no special aspect of the title I program which makes type 2 supervised mortgagees more appropriate for that program than for other insurance programs. The Department would retain differences specifically based on differences between the title I program and other insurance programs, e.g., the differences in proposed net worth requirements and the different treatment of loan correspondents. Commenters are generally requested to comment on any specific differences between the two proposed regulations which should be retained, due to differences in the program, with an explanation of how the regulations differences are related to program differences.

The proposed new subpart B is based largely on the existing mortgagee approval requirements set forth in §§ 203.1 through 203.8, with several changes. Generally, the changes proposed to these sections would strengthen the approval requirements, reflect current administrative approval practices, and parallel certain requirements and procedures introduced in the title I Reform proposed rule.

The major regulatory changes proposed by this rule include:

(1) An increase in the net worth requirement, which would be applicable to all classes of mortgagees, and which would be phased in over a two year period;

(2) An approval agreement between the Department and the mortgagee that would provide the Department with the authority to limit the participation of mortgagees with excessive default and claim rates;

(3) A requirement that mortgagees be in compliance with State licensing requirements; and

(4) A requirement that mortgagees maintain 20 percent of their net worth in liquid assets.

The following section-by-section analysis discusses the substantive changes that would be made to part 202, by the addition of a new subpart B. As noted above, subpart B largely would consist of the regulations governing mortgagee approval, currently found in part 203 (§§ 203.1–203.8), with modifications made to several of these regulations. These modifications are highlighted in the section-by-section analysis. Those regulations in part 203 that would be transferred to part 202, without substantive change, are not discussed. The chart at the end of the section-by-section analysis lists the existing part 203 section citations, and their proposed redesignated part 202 section numbers.

Section-by-Section Analysis of Part 202

Section 202.10 Definitions

A definition of "mortgage" is proposed to be added. Since the approval requirements for title II insured mortgage programs and loan programs would be combined in subpart B, the definition would clarify that the use of the term "mortgage" applies to both mortgages and loans in the title II insurance programs.

The term "mortgagee" would be defined to include all categories of mortgage lenders eligible to participate in title II programs. Where the regulations apply only to certain categories of approved mortgagees (e.g. loan correspondents or investing mortgagees), the regulations will identify that category instead of using the broad term mortgagee.

Section 202.11 Approval, Recertification, Withdrawal of Approval and Termination of Approval Agreement

Section 202.11(a) would provide for an approval agreement between the Secretary and the mortgagee. The agreement shall set forth the terms governing the mortgagee's continued approval. Section 202.11(a)(5) provides for approval of authorized agents in areas which are otherwise under served by the mortgage market. Section 202.17(d) also provides for use of authorized agents by governmental institutions, Public Housing Agencies and State Housing Agencies. The role of authorized agents in the HUD mortgage insurance programs is addressed in the discussion of proposed new § 202.13(c).

Section 202.11(b) would clarify that there is an annual recertification procedure for approved mortgagees. This section would also state that currently approved mortgagees would enter into the approval agreement required under proposed § 202.11(a) at the time of recertification.

Section 202.11(d) would authorize the Secretary to terminate an approval agreement when the mortgagee has had excessive defaults and claims on insured mortgages originated by the mortgagee. There is currently no mechanism by which the Department may terminate its relationship with an approved mortgagee that has demonstrated unsatisfactory performance and, consequently, poses an unacceptable risk to the insurance funds, other than through formal administrative action by the Mortgagee

Review Board. The Mortgagee Review Board's primary function, however, is to sanction lenders found to have committed serious violations of program requirements, or to have engaged in fraudulent activity with respect to the mortgage programs. Where the Mortgagee Review Board withdraws a mortgagee's approval the mortgagee cannot reapply for at least one year. The proposed rule would establish a relationship between a mortgagee and the Department which is terminable on the basis of failure to meet a single performance standard measured in terms of the rate of defaults and claims, regardless of whether any specific program requirements were violated.

The proposed rule would provide that each quarter the Department will review mortgages originated in the Federal fiscal year by each mortgagee. A mortgagee whose annual claim and default rate for the area served by a HUD field office is 200 percent of the HUD office average rate for the same year ("normal rate") will have its approval agreement terminated upon 30 days notice (provided that the mortgagee's claim/default rate is above the national average).

In determining the rate of defaults and claims which would constitute an unacceptable risk to the Department, HUD compiled the individual claim and default rates of all approved mortgagees in each HUD field office and analyzed this data in conjunction with mortgage insurance premium collections and foreclosure costs. Based on these and other operating expenses of HUD, it was determined that mortgagees which have twice the default and claim rate of the field office normal rate have demonstrated unsatisfactory performance and pose an unacceptable risk to the insurance funds. However, the Department recognizes that a mortgagee which lends in under served areas may experience unusually high default rates. For this reason, before termination the Department also will take into account census tract data to assure the availability of mortgage credit in under served areas. The Department does not intend to penalize mortgagees for satisfying its obligations under the Home Mortgage Disclosure Act and the Community Reinvestment Act. Mortgagees which have received a termination notice may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or his or her designee before the termination is instituted. The Department will take into consideration all relevant factors and reasons for the excessive default rates before the termination is made final. The proposed rule grants mortgagees the right to apply for a new approval agreement after termination. The Department will consider all relevant factors, including statements and documents provided by the mortgagee, in determining whether the causes for termination have been remedied. If a mortgagee's approval agreement is terminated it may continue to service mortgages in its own portfolio. If the approval agreement of an approved servicer is terminated, the servicer will be required to transfer its servicing obligations to another HUD approved mortgagee-servicer within 60 days of receipt of the termination notice and will not be permitted to continue involvement in the servicing of insured mortgages.

A mortgagee whose claim and default rate is between 150 percent and 200 percent of the HUD office average will be placed on a "credit watch" provided that the Department's review of the census tract data warrants such action. All mortgages originated during the six month period following the credit watch notice (the tracking period) will be reviewed one year after the end of the tracking period. A mortgagee on credit watch may have its approval agreement terminated upon 30 days notice if the claim and default rate on mortgages originated by the mortgagee, during the tracking period is above 150 percent of the HUD office average. If a mortgagee's claim and default rate for the tracking period drops below the 150 percent level, the credit watch will end. A mortgagee which has received notice that its approval agreement is to be terminated subsequent to the credit watch may also request an informal conference as discussed above.

The Department will make available to all approved mortgagees, on a quarterly basis, data showing their respective claim and default rates in comparison to HUD office and national rates. This will enable each mortgagee to evaluate its performance and take appropriate corrective action where warranted. In addition, the data will provide mortgagees with a means to detect potential problems with their origination practices.

The approval agreement, permitting termination based on performance, would be established between the mortgagee (including all of its HUD-approved branch offices) and the Department. In reviewing a mortgagee's performance, the Department will analyze the mortgagee's overall claim and default rate, as well as that of each of its branch offices. Where a branch office exceeds the claim and default threshold, branch approval may be terminated or the branch office may be subject to a credit watch.

Section 202.12 General Requirements

Section 202.12(a) would remove trusts from the type of businesses that may be approved as mortgagee participants in the HUD mortgage insurance programs, and would add additional types of partnerships. The difficulty of separating the roles of the mortgagee, as holder of its own mortgages, from that of a trustee for mortgage trust assets, greatly complicates the mortgagee approval process and the supervision required for trusts, as compared to corporations or partnerships. The Department expects no disadvantage to mortgagees or the public from the exclusion of trusts as approved mortgagees, for two reasons. First, proposed § 202.12(d) is equivalent to existing § 203.3(e), which permits supervised mortgagees to hold insured mortgages in a fiduciary capacity. Insured mortgages may still be trust assets under this arrangement. Second, since trusts were added as eligible mortgagees in 1960, very few trusts have applied for mortgagee approval. No trust has applied for mortgagee approval in the last seven years. Trusts which currently are approved mortgagees would be allowed to continue its mortgagee approval as a trust, but new applicants would be required to qualify under the revised rule. Excluding trusts as approved lenders participants also was proposed in the title I Reform proposed rule. The Department specifically solicits comments on the proposal to not approve trusts.

The Department proposes to include all general and limited partnerships in the list of eligible mortgagees. The Department's long-established standards governing mortgagee approval require that a mortgagee be a chartered institution, or a permanent organization having succession. On July 30, 1980 (45 FR 50560), the regulations at § 203.2(a) were expanded to permit certain limited partnerships to be approved mortgagees, provided that the partnership agreement contained certain provisions to assure that it was a permanent organization having succession. Since including limited partnerships as eligible approved mortgagees, the Department has considered the approval requests of other limited partnerships and general partnerships, on a case-by-case basis. In doing so, the Department has applied criteria similar to those currently in the regulations to ascertain whether the partnership is a permanent organization having succession. In order to facilitate processing approval requests from

partnerships, the Department proposes to codify the criteria for the approval of partnerships as mortgagee program participants.

The proposed rule would provide that all general partners of a partnership must be corporations. Additionally, partnerships must have one managing general partner, which has as its principal activity the management of the partnership, and which deals directly with the Department in regard to the partnership's insured mortgages. If the managing general partner withdraws or is removed from the partnership, HUD must be immediately notified of the new managing general partner.

The partnership agreement must provide for the partnership to continue if any partner withdraws. The partnership agreement also shall provide for the partnership to exist for a term of years, which indicates that the partnership is a permanent organization. The majority of partnership agreements that have been reviewed by the Department indicate that it is typical in the market place to have a partnership term of 15 to 30 years. The Department proposes to issue handbook guidelines stating that a term under 5 years would not be satisfactory, because it indicates that the partnership is being organized for an isolated project rather than for a permanent business. The Department has found that partnerships organized for a single purpose tend not to have long term financial stability, and pose a threat to the security of the insurance funds. The inclusion of partnerships as eligible lenders is also under consideration in the title I Reform proposed rule. If the partnership provision in this proposed § 202.12(a) is adopted, it also may be adopted in the context of title I lender approval.

Section 202.12(d) would incorporate as a general requirement for all mortgagees the current escrow requirements for non-supervised mortgagees at § 203.(4)(b)(3). The proposed rule would require that mortgagees segregate escrow funds, including mortgage insurance premiums owed to the Department, in a federally insured account.

Section 202.12(h) would add three reporting requirements to the reporting requirement in existing § 203.2(h). First, the proposed rule would establish the requirement that a mortgagee, at the time it applies for approval and annually thereafter, the mortgagee must submit evidence of compliance with any State licensing requirements. The mortgagee would be required to (1) submit a copy of the license with its application for approval (or certify that there are no licensing requirements), and (2) certify in its annual approval verification that it is in compliance with all State licensing requirements. This certification requirement will provide for additional monitoring of approved mortgagees, without increased cost to the Department and minimal cost to mortgagees.

Second, no requirement currently is imposed on mortgagees to report on their financial condition, other than the submission of an annual audited financial statement. The proposed rule would require each approved mortgagee to file a quarterly financial statement with the Department for each quarter in which it experiences an operating loss of 20 percent or more of its net worth in one quarter of a fiscal year. This reporting requirement will provide an early warning system for detecting financially troubled mortgagees, and will allow the Department to take appropriate action to protect its interests. The Department will review the quarterly reports to assure that the mortgagee continues to meet the Department's net worth requirements. The quarterly reports will no longer be required when the mortgagee demonstrates an operating profit for two consecutive quarters or until the next recertification, which ever is longer.

Third, the proposed rule would require that within 30 days of the commencement of bankruptcy or similar proceedings the mortgagee must demonstrate to the Department that it is still in compliance with the net worth requirements. This reporting requirement will assure the Department that mortgagees continue to maintain the appropriate net worth at all times, as required by the regulations.

Section 202.12(m) would expand the permitted use of branch offices, for the submission of applications for mortgage insurance, to all classes of approved mortgagees. This proposed expansion is based on the Department's positive experience with the branch offices in the HUD mortgage insurance programs, and on an absence of reasons to prohibit mortgagees from using branch offices in this capacity.

Section 202.12(n) would increase the current net worth requirements. Net worth would continue to be comprised of the assets acceptable under the Generally Accepted Accounting Practices (GAAP), excepting those assets listed in Handbook 4060.1, appendix 2. The existing regulation requires: (1) A net worth of $100,000 for nonsupervised mortgagees and for supervised mortgagees covered by § 203.3(b)(2); and (2) a net worth of $25,000 for loan correspondents. Nonsupervised mortgagees that participate in the Direct Endorsement program are required to have a net worth of $250,000.

The proposed rule first would expand the net worth requirement to all supervised mortgagees. The proposed rule also would establish net worth requirements based on the volume of loans originated or the outstanding balance of loans serviced by approved mortgagees, except loan correspondents and sponsors. Mortgagees with $25 million or less in annual insured mortgage originations or servicing portfolios would be required to have a net worth of $250,000. Mortgagees with $50 million or less in annual insured mortgage originations or servicing portfolios would be required to have a net worth of $500,000. Mortgagees with more than $50 million, but less than $100 million in annual insured mortgage originations or servicing portfolios, would be required to have a net worth of $750,000. Mortgagees that originate or service more than $100 million in insured mortgages would need a net worth of $1,000,000.

Loan correspondents would be required to have a net worth of $50,000, with additional net worth required for each branch office. All mortgagees who act as sponsors for loan correspondents, or who both originate and service insured mortgages, would be required to have a net worth of $1,000,000.

Section 202.12(o) would provide a two year phase-in period for all currently approved mortgagees, except loan correspondents, to meet the new net worth requirements. Loan correspondents would be required to meet the new net worth requirements by the effective date of the rule. Newly approved mortgagees would be required to have a net worth of $250,000 for the first year of approval. Thereafter, the net worth requirement would be based on the mortgagee's actual volume of originations or servicing. If the proposed net worth requirements were in place during fiscal year 1989, almost 50 percent of the loan origination activity would have been from mortgagees with a net worth above $750,000. The Department believes that the proposed net worth requirements will encourage financial responsibility and commitment, enhance mortgagees' independent quality control programs, and conform to standards set by other agencies and entities involved in the mortgage loan business, and by the marketplace. Any mortgagees unable to meet the higher net worth requirements may choose to seek approval under the loan correspondent provisions.

Section 202.12(q) would establish a liquidity requirement for approved mortgagees. There is currently no requirement for approved mortgagees to maintain liquid assets. Liquid assets would be comprised of cash in banks and on hand, and other cash assets not set aside for specific purposes other than the payment of a current liability or a readily marketable investment. The lack of liquidity has resulted in cases of misuse of trust funds by mortgagees, such as mortgage insurance premiums, for operating purposes. The proposed rule would establish the requirement that approved mortgagees maintain, at all times, liquid assets (cash or its equivalent) of 20 percent of their net worth up to a maximum amount of $100,000.

Section 202.12(r) would establish the requirement that all mortgagees maintain a fidelity bond. The Department will require fidelity bonds with a base coverage of $300,000 covering the mortgagee's employees and agents. Such coverage would provide a source of indemnification to the Department and to borrowers for errors and omissions committed by the mortgagee's employees or agents. The fidelity bond also would provide mortgagees with a backstop for various claims that are typically covered by such bonds. The requirement that approved mortgagees have a fidelity bond in effect at all times is consistent with the requirements of other agencies and entities involved in the mortgage business, including FNMA, GNMA and FHLMC. Since most approved mortgagees also are participants in the FNMA, GNMA or FHLMC programs, this market driven requirement will not affect most approved lenders as they already have bond coverage.

Section 202.13 Supervised Mortgagees

Section 202.13(a) would delete "type 2" supervised mortgagees, provided for in existing § 203.3(b)(2), as a category of approved mortgagee. Under § 203.3(b)(2), a type 2 mortgagee is typically a subsidiary or affiliate of a bank or savings and loan association which is subject to periodic examinations by a Federal or state agency. The experience of the Department is that the periodic examinations of these mortgagees conducted by other agencies do not provide adequate assurance that mortgagees are performing according to HUD financial and program standards. This proposed change will permit the Department to fulfill its statutory obligation to protect the insurance funds by monitoring the financial condition of these mortgagees which are extending the credit of the Federal government.

There currently are approximately 1,700 approved type 2 mortgagees. The mortgagees in this category would be converted to approved nonsupervised mortgagees, under proposed § 202.14. The major difference in the requirements between a nonsupervised mortgagee and a type 2 supervised mortgagee is that a nonsupervised mortgagee must submit an annual audited financial statement to the Department. Since all type 2 mortgagees are ongoing business entities, these mortgagees currently prepare financial statements. The Department does not expect that compliance with this requirement will impose an undue burden on mortgagees.

Section 202.13(c) is based on existing § 203.3(b), except that the net worth requirement of § 203.3(b)(2)(ii) would be deleted. The net worth requirements in proposed new § 202.12(n) would apply to all mortgagees. Similarly, the net worth requirements for branch offices at § 203.3(c) would be republished at proposed new § 202.12(m), and made applicable to all mortgagees.

Supervised mortgagees are permitted by existing § 203.2(d) to designate authorized agents for the purpose of submitting mortgage applications to the Department. Due to the difficulty in supervising authorized agents, the Department proposes to limit the applicability of authorized agents without prior approval to governmental agencies, as defined in proposed new § 202.17. The Department recognizes that mortgagees may need to use authorized agents to meet the lending demand in rural areas and inner cities. Proposed § 202.11(a)(5), discussed above, would permit the use of authorized agents to reach underserved areas upon approval by the Secretary.

Section 202.14 Nonsupervised Mortgagees

Section 202.14(c) would incorporate the requirements for nonsupervised mortgagees, currently set forth in existing § 203.4(b), with two changes. First, the net worth requirements of § 203.4(b)(1) would be transferred to proposed new § 202.12(n), as discussed above. Second, the current warehouse line of credit requirement at existing § 203.4(b)(2) would be increased to $3 million, and transferred to proposed new § 202.14(c)(1). The Department requests comments on the proposed change to the warehouse line of credit requirement.

The present $250,000 warehouse line of credit requirement is inadequate to assure that mortgagees have sufficient sources of credit to fund their loan production. This has caused misuse of mortgage insurance premiums and escrow accounts for the purpose of funding mortgages. Based on an average single family mortgage amount of approximately $65,000, the requirement to maintain a $3 million warehouse line of credit will provide for the funding and closing of two to three months of production for most mortgagees. The proposed warehouse line of credit would ensure that nonsupervised mortgagees have the ability to fund loans.

Under § 202.15(c)(3), which is discussed below, loan correspondents would not be required to maintain a separate warehouse line of credit, but they would be required to have an acceptable funding program with their sponsor.

Currently, existing § 203.4(c) exempts mortgagees that originate 100 or fewer insured single family mortgages from filing compliance test reports under § 203.4(b)(4)(ii). In order for the Department to maintain better quality control and conduct better monitoring of mortgagees, this section would be removed.

Section 202.15 Loan Correspondents.

Section 202.15(a) would define the terms "loan correspondent" and "sponsor" without substantive change from the use of those terms at § 203.5 of the current regulations.

Section 202.15(c) would be based on the eligibility requirements for loan correspondents, currently found at existing § 203.5(b), with two substantive changes. First, § 202.15(c)(6) would expressly state that sponsors and loan correspondents have a principal-agent relationship. The Department proposes to hold the mortgagees to the general agency standards imposed under State law. The general rule of agency law is that the principal (i.e., the sponsor) is liable for the acts of the agent (i.e., the loan correspondent) committed within the reasonable scope of the agent's authority. The principal generally is jointly and severally liable with the agent for deficiencies in the agent's performance. Application of the general rule of agency to approved mortgagees would mean that both the sponsor and the loan correspondent would be liable to indemnify the Department for claim losses on mortgages originated by the loan correspondent. The Department believes that this amendment to the mortgagee approval regulations would (1) increase the responsibilities of the sponsor for the quality of insured mortgages originated by the loan

correspondent; and (2) result in greater industry self-regulation and greater quality control in the origination of insured mortgages. In addition, sponsors will be more selective about the loan correspondents from whom they purchase insured mortgages. Second, as discussed in this preamble under § 202.14(c), the warehouse line of credit requirement would be increased to $3 million, unless a sponsor agrees to fund mortgages originated by the loan correspondent.

Section 202.16 Investing Mortgagees

Section 202.16 would incorporate the existing requirements for investing mortgagees, currently found at § 203.6, except that new § 202.16 would remove trust funds from the definition of investing mortgagees in order to parallel the changes at proposed § 202.12(a). (The reasons for excluding trusts as eligible mortgagees is addressed in this preamble under the discussion of § 202.12(a).)

Section 202.17 Governmental Institutions

No substantive changes are proposed to existing § 203.7, which addresses governmental institutions as approved mortgagees. Section 203.7 would be redesignated as § 202.17, with minor conforming changes. Sections 203.7 (b) and (c) would be combined, because the coinsurance program provided in § 203.7(c) has been discontinued.

Section 202.18 Approval for Servicing

There is currently no HUD requirement that a mortgagee use an approved mortgagee to service insured mortgages. The proposed rule would add new §§ 202.18 and 207.263, and amend § 203.502, to establish the requirement that only approved mortgagees may service insured single family and multifamily mortgages. The Department would require that subservicers be approved mortgagees. The requirement would increase the quality of insured mortgage servicing, because only approved mortgagees that demonstrate servicing capability would be authorized to service insured mortgages.

This proposed requirement also would bring HUD approval standards into conformity with market practices. Currently, GNMA and FHLMC require that servicers of pooled mortgages must be HUD approved mortgagees. Consequently, most servicers of insured mortgages are already approved mortgagees. These servicers would merely have to inform the Department that they service insured mortgages and that they are approved mortgagees. Servicers which are not approved mortgagees would have to meet the approval requirements of proposed part 202 and apply for approval. The Department recognizes that most mortgagees are obligated under servicing contracts, and therefore proposes to make this provision effective one year after the effective date of the final rule.

The new § 207.263 will clarify that a mortgagee may contract for servicing for fully insured multifamily mortgages under the same conditions applicable to single family mortgages. Although all multifamily mortgagees are subject to the current § 203.2(f) which references the single family servicing rules, this reference was ambiguous since some of these rules are clearly inapplicable for multifamily mortgages. The new section is intended to eliminate the ambiguity. For existing multifamily coinsured mortgages, the servicing provisions in the applicable coinsured regulations remain in effect.

Section 202.19 Report Requirements

Existing § 203.8, which sets forth reporting requirements, would be redesignated as § 202.19, with minor amendments to incorporate technical and conforming changes.

Mortgagee Approval Citations Chart

The following chart lists (1) the current mortgagee approval regulations of part 203, and (2) the corresponding redesignated citation at proposed new subpart B of part 202. The chart indicates whether the proposed new regulations would revise substantially the Department's requirements and policy as codified in the current regulations.

Current	Proposed	Substantial revision
None	202.10	No.
203.1(a)(1)	202.11(a)(1)	Yes.
203.1(a)(2)	202.11(a) (2) and (4).	Yes.
203.1(a)(3)	203.11(a)(3)	No.
None	202.11(b)	No.
203.1(b)	202.12(p)	No.
203.1(c)	202.11(c)	No.
None	202.11(d)	Yes.
None	202.11(e)	Yes.
203.2 (intro)	202.12 (intro)	No.
203.2(a)	202.12(a)	Yes.
203.2(b)	202.12(b)	No.
203.2(c)	202.12(c)	No.
203.2(d)	202.12(d)	Yes.
203.2(e)	202.12(e)	No.
203.2(f)	202.12(f)	No.
203.2(g)	202.12(g)	No.
203.2(h)	202.12(h)	Yes.
203.2(i)	202.12(i)	No.
203.2(j)	202.12(j)	No.
203.2(k)	202.12(k)	No.
203.2(l)	202.12(l)	No.
None	202.12(o)	Yes.
None	202.12(q)	Yes.
None	202.12(r)	Yes.
203.3(a)	202.13(b)	No.
203.3(b)(1) (2)	202.13(a)	No.
203.3(b)(2)(i)	202.13(c)	No.
203.3(b)(2)(ii)	202.12(n)	Yes.
203.3(c)	202.12(m)	No.
203.3(d)	202.11(a)(5)	Yes.
203.3(e)	202.13(d)	No.
203.4(a)	202.14(a)	No.
203.4(b)	202.14(a)	No.
203.4(b)(1)	202.12(n)	Yes.
203.4(b)(2)	202.14(c)	Yes.
203.4(b)(3)	202.12(d)	No.
203.4(b)(4)	202.14(c)(3)	No.
203.4(c)	None	No.
203.4(d)	202.12(m)	No.
203.5(a)	202.15(a), (b) & (c)(1).	No.
203.5(b)	202.15(c)(1) & (c)(5).	No.
203.5(b)(1)	202.15(c)(2)	No.
203.5(b)(2)	202.15(c)(3)	Yes.
203.5(b)(3)	202.12(n)	Yes.
203.5(b)(4)	202.12(m) & (n)(5).	Yes.
203.5(b)(5)	202.15(c)(4)	No.
203.6	202.16	No.
203.7	202.17	No.
None	202.18	Yes.
203.8	202.19	No.

Administrative Sanctions

Limited Denial of Participation

The existing regulations at § 24.700 authorize a HUD office to issue a limited denial of participation (LDP) against employees, officers, directors or principals of a mortgagee, as well as builders, brokers and real estate agents who participate in HUD's programs, and who fail to comply with the Department's requirements or who engage in fraudulent conduct. An LDP action may not be taken against an FHA-approved mortgagee. Section 24.710(a)(3) provides that an LDP is a local action limited to the jurisdiction of a particular HUD office, and to the program under which the violations occurred. The Department has found that in some instances there has been a lack of consistency and timeliness in the manner in which LDP actions are initiated by the various HUD offices.

The proposed amendments to §§ 24.700 and 24.710(a)(3) would provide the Deputy Assistant Secretary for Single Family Housing with the authority, concurrent to that of the HUD offices, to impose LDP actions within one geographic area or nationwide. The proposal for both centralized and local LDP authority will improve the Department's organizational efficiency. Such action would be taken in accordance with existing requirements governing LDP's.

Mortgagee Review Board

The grounds for administrative action at § 25.9 would be expanded to include violation of the liquidity and warehouse line of credit requirements set forth in proposed new §§ 202.12(q), 202.14(c)(1), 202.15(c)(3), and 202.16(b)(2).

Direct Endorsement Program—Expansion of Program and Reorganization of Regulations

The regulations at § 200.163 and § 200.164 establish the requirements for the Direct Endorsement program, and the criteria for approval of Direct Endorsement mortgagees, respectively. In connection with the changes proposed in the Direct Endorsement program, the Department proposes to reorganize, edit and move the Direct Endorsement regulations to part 203. A section-by-section analysis of the substantive changes made to the Direct Endorsement regulations follows. Sections which have been renumbered or which contain only technical or clarifying changes are listed in the chart at the end of the section-by-section analysis.

Section-by-Section Analysis of Part 203

Section 203.1 Underwriting Procedures

The Department proposes to expand the Direct Endorsement Program to virtually all single family programs, and to require mortgagees to process and underwrite mortgages under the Direct Endorsement Program in all cases permitted by the Department. Since loan correspondents do not have Direct Endorsement authority, they would be required to process mortgages through a Direct Endorsement sponsor. This regulatory change would limit the availability of the current procedures which permit mortgagees to submit mortgages for processing to HUD offices.

The Department expects the proposal to improve the overall quality of insured mortgages, and to reduce the risk of loss to the HUD mortgage insurance funds. The Department's analysis of insured mortgages indicates that mortgages not processed under the Direct Endorsement program have a claim and default rate which is significantly higher than that of Direct Endorsement mortgages. This proposed change is not expected to have a significant impact on mortgagees or mortgagors, because less than 8 percent of all endorsed mortgages are processed by the HUD offices annually. This proposal would enhance the ability of HUD offices to perform reviews of Direct Endorsement mortgagees, rather than underwriting individual mortgages. The Department specifically requests public comments on the proposal to expand Direct Endorsement.

Section 203.3 Approval of Mortgagees for Direct Endorsement

Section 203.3 would republish the regulations governing approval of Direct Endorsement mortgagees, currently contained in § 200.164, in a simplified form, and with two substantive changes.

First, § 203.3(c) would provide that Direct Endorsement underwriters would be approved by the HUD Central Office on a nationwide basis. The proposed rule would still permit a HUD local office to approve underwriters which operate in that jurisdiction. The underwriter's national approval would only be terminated by HUD Central Office. Each HUD office could terminate an underwriter's approval in that particular field office's jurisdiction when it is determined by the HUD office that such termination is appropriate. The authority of the HUD office is in addition to the sanctions that the Department may currently impose against underwriters pursuant to 24 CFR part 24.

This proposal would allow the HUD office to continue to monitor underwriters, based on direct assessment of the underwriter's performance. Additionally, this proposal would give mortgagees significant ability to operate in more than one locale, and should make it more practical for mortgagees to participate in the HUD mortgage insurance programs. Previously, mortgagees were subjected to an underwriter approval system, which was often unnecessarily complicated and cumbersome.

Second, the proposed rule would authorize the HUD Central Office to terminate Direct Endorsement approval granted on a nationwide basis. The proposed rule would continue to permit a local HUD office to terminate a mortgagee's Direct Endorsement approval within the office's jurisdiction. As under current policy, a termination decision by the local HUD office would apply only to the mortgagee's office that was found to be in violation of the Department's requirements. The addition of HUD Central Office termination authority would provide consistency and timeliness in taking termination actions nationwide. Termination actions by the HUD Central Office will be taken in accordance with existing regulations and handbook requirements governing the Direct Endorsement program. The local HUD offices will continue to impose lesser sanctions on Direct Endorsement mortgagees (i.e., probation, and placing a mortgagee in pre-approval status).

This rule would continue the current approval system whereby general mortgagee approval is distinct from Direct Endorsement approval. The termination of a mortgagee's Direct Endorsement approval only would limit the mortgagee's approval to underwrite insured mortgages and would not affect its basic mortgagee approval agreement with the Department. A mortgagee which has had its Direct Endorsement approval terminated may continue to close insured mortgages by entering into a loan correspondent relationship with an approved mortgagee who will underwrite the mortgages as a sponsor. The Department would permit such a mortgagee to continue to hold and service loans in its portfolio at the time its Direct Endorsement approval was terminated. If a branch office loses its Direct Endorsement approval, it may submit loans to another branch, regional or central office of the mortgagee for Direct Endorsement processing. In contrast, the concept of an approval agreement, as discussed in earlier in this preamble, provides the Department with a mechanism to terminate its relationship with a mortgagee demonstrating unsatisfactory performance, as reflected in its claim and default rate for FHA insured mortgages. Termination of a mortgagee's approval agreement or termination of approval of a mortgagee's branch office that has failed to meet acceptable performance standards, precludes the mortgagee or its branches from originating any insured mortgages.

Section 203.5 Direct Endorsement Process

Section 203.5 would incorporate the regulations governing the Direct Endorsement process, currently set forth in § 200.163 (a) and (b)(1–4), in a simplified form. The programs which would become eligible for Direct Endorsement processing are § 203.43c, §§ 203.43g–203.43i, § 203.44, part 206, subpart C of part 213, § 221.65, part 226, subpart C of part 227, Subpart A of part 233, § 234.70 and part 237 and section 235(r) of the National Housing Act.

Section 202(e) of the National Housing Act, requiring mortgagees to use a licensed or certified appraiser, and section 322 of the Cranston-Gonzalez National Affordable Housing Act of 1990, pertaining to mortgagee selected appraisers, has not been incorporated into this rulemaking. Due to the comprehensive nature of this proposed rule and the broad implications of the change in the appraiser requirements, the Department is initiating a separate rulemaking procedure to address the

issue of HUD approved and mortgagee selected appraisers. Because of the pending rulemaking, this proposed rule does not reproduce the current language on appraisers in the Direct Endorsement regulation.

Section 203.7 Commitment Process

Section 203.7 retains the current explanation of the mortgage commitment process at existing § 203.13(a), for those insurance programs for which Direct Endorsement would not be applicable under the proposed rule.

Section 203.255 Insurance of Mortgage

Section 203.255 would be revised to reflect that the majority of single family insurance programs would be limited to Direct Endorsement processing. Section 203.255(a) would continue to provide for the issuance of a Mortgage Insurance Certificate for those mortgages not eligible to be originated under Direct Endorsement.

Section 203.255(b) is based largely on the current Direct Endorsement processing rules at § 200.163(b)(5) and (c). Section § 203.255(b) would delete the current list of specific mortgagee certifications at § 200.163(b)(5)(xi) (A)–(I), and the specific underwriter certifications at § 200.163(c) (1)–(11). The requirement that mortgagees and underwriters certify that the loan complies with specific program requirements would be retained. However, specific program regulations subject to certification would be listed in the Direct Endorsement Handbook, and not in the regulation. The expansion of Direct Endorsement processing would make it extremely cumbersome to include all regulatory requirements for all insurance programs in the test of the regulations. The proposed handbook certifications would not introduce new requirements, but only would cover requirements which either are currently in regulations, or in mortgagee letters and handbooks, which have been distributed to all approved mortgagees.

The current Direct Endorsement regulation merely lists the program regulations to which the mortgagee must certify compliance, while the current handbook attempts to set out the certification in a textual form. However, the items in the handbook do not correspond exactly with the list of certifications required by the rule. The duplicate coverage of specific certification items in the regulations and the handbook would be eliminated, and the Department would have greater flexibility to update certifications in a clear manner, while still ensuring that all affected mortgagees had knowledge of required certifications.

As a conforming change, the Department proposes to delete § 200.163(f). Since all mortgages, except those mortgage programs expressly excluded, would be processed under Direct Endorsement there would be no need for regulatory procedures to expand the mortgage types eligible for Direct Endorsement. Additionally, all Direct Endorsement certifications would be published in the handbook and distributed to all mortgagees. Accordingly, a **Federal Register** notice of supplementary certifications would be duplicative. The list of required documents, other than certifications, would be retained in the rule, but § 203.255(b)(10) would differ from the current § 200.163(b)(5)(xi)(10), since the current provision does not clearly state program requirements. The proposed rule would also require the mortgagee to submit "such other documents as the secretary may require" to acknowledge the full list of documents required in the current Direct Endorsement handbook and to provide room for future development of the Direct Endorsement program.

Section 203.255(b)(9) would include conforming changes. The current reference to proposed construction, at § 200.163(b)(5)(ix) regarding health authority approval letters for individual water or sewer systems, is not consistent with Departmental policy. Handbook 4905.1 requires water and sewer approval letters also for existing construction. Therefore, the reference to proposed construction is proposed to be deleted. This section would also include a cross reference to the water supply construction requirements at § 200.926d(f).

Section 203.255(c) is based largely on the current Direct Endorsement processing rules at § 200.163(d). Section 203.255(c) would eliminate the reference to interest rates, which is unnecessary due to the 1983 deregulation of interest rates for insured mortgages. This section also would expand upon existing § 200.163(d) by making explicit two items of pre–endorsement review, which only are implied in the current regulations.

First, HUD would need to determine before endorsement that required up-front mortgage insurance premium (MIP), as well as any late charge and interest, has been paid. HUD procedures throughout the life of the Direct Endorsement program have prohibited HUD offices from endorsing mortgages with unpaid up-front MIP. Payment is a "condition of endorsement" under § 203.280. This change would merely conform the Direct Endorsement regulations to existing procedures.

Second, HUD would review the documents for information indicating incomplete, false, or misleading documents, or fraud or misrepresentation on the part of any party, or other reasons the mortgage is ineligible for insurance. The Direct Endorsement program is designed to provide assurance of endorsement for mortgages which meet all program requirements. On the other hand, HUD has never delegated to Direct Endorsement mortgagees the power to endorse mortgages. Accordingly, HUD's ultimate responsibility to determine whether or not to endorse a mortgage must be based on all available information concerning compliance with program requirements. If HUD is aware of noncompliance with program requirements, it has no power to endorse a mortgage for insurance. This proposed change would expressly add to the regulations HUD's interpretation of its current regulations as stated in Mortgagee Letter 88–35.

Section 203.255(d) also is based on Mortgagee Letter 88–35. This section would clarify that an assignee of the originating mortgagee may submit a mortgage in the name of the originating mortgagee for pre-endorsement review, and may pay the up-front MIP.

Direct Endorsement Citation Chart

The following chart lists the (1) current Direct Endorsement regulations and other regulations concerning mortgage insurance application processing, and (2) the corresponding proposed citation of the new proposed regulation. The chart indicates whether the proposed regulation would revise substantially the corresponding current regulation. Related changes would be made in parts 213 and 234.

Current	Proposed	Substantial revision
203.10	203.7	Yes.
203.11	203.7	Yes.
203.13(a)	203.7	No.
203.13(b)	203.5(a)	No.
203.255(a)	203.255(a)	No.
203.255(b)	203.255(b)	Yes.
200.163(a)(1) & (2).	203.5(a) & (b)	Yes.
200.163(a)(3)	203.255(b)(5) & (11).	No.
200.163(b)(1)	203.5(c)	No.
200.163(b)(3)	none; separate rule will be done.	No.
200.163(b)(4)	203.5(d)	No.
200.163(b)(5)	203.255(b)	No.
200.163(b)(5)(i)–(x).	203.255(b)(1)–(11).	No.

Current	Proposed	Substantial revision
200.163(b)(5)(xi)(A)–(I).	None	No.
200.163(c)	203.255(b)(5)	No.
200.163(c)(1)–(11).	None	No.
200.163(d)	203.255(c)	No.
None	203.255(d)	No.
200.163(e)	203.255(e)	No.
200.163(f)	None	No.
200.164(a)(1)	202.3(a)	No.
200.163(b)(5)	203.255(b)	No.
200.164(b)	203.3(a)	No.
200.164(c)(1)	203.3(b)(1)	No.
200.164(c)(2)	None	Yes.
200.164(d)	203.3(b)(2)	No.
200.164(e)	202.12(j)	No.
200.164(f)	203.3(b)(3)	No.
200.164(g)	203.3(b)(4)	No.
None	203.3(c)	Yes.
200.164(h)	203.3(d)	No.
200.164(i)	203.3(b)(5)	No.
200.164a	203.248	No.

Conforming Changes

The following regulations would be amended to conform with the Department's proposal to expand the Direct Endorsement program.

Section 203.14 Builders Warranty

The current reference to commitments in the first line of § 203.14 is proposed to be deleted because this rule would make Direct Endorsement the primary insurance processing program thereby eliminating the use of commitments in virtually all programs.

Section 203.17 Mortgage Provisions

Section 203.17(d) would be revised to delete reference to mortgages with 35 year terms. Currently, the Department does not endorse mortgages which have a 35-year term under the Direct Endorsement program. Since this rule would expand the Direct Endorsement program, section 203(b) single family mortgages would be required to have a term of no longer than 30 years. Additionally, there has been little use of this regulatory provision for non-Direct Endorsement cases, because generally only mortgages with 30-year terms are eligible for purchase on the secondary market. If this proposed change is adopted in the final rule, changes would be made to any other single family program regulations which permit mortgage terms in excess of 30 years (ie. §§ 213.510(a), 221.30, 227.545, 234.25(c)(2)).

Section 203.27 Charges, Fees or Discounts

Section 203.27 would clarify that the Department would continue its post-endorsement review of fees under § 203.255 for all mortgages directly endorsed.

References to Mortgagee Approval Regulations

As a result of the proposed relocation of the mortgagee approval regulations, numerous cross-references in other program regulations would be inaccurate or obsolete. If a final rule is published with the mortgagee approval regulations relocated in part 202 as contemplated by this proposed rule, the final rule also would modify or delete the following sections of title 24: §§ 25.9 (h) and (u), 204.2(a), 204.5, 204.400, 206.9, 206.125(g)(3), 206.129(d)(2)(i), 207.22, 213.39, 213.502, 220.563, 221.528, 221.800, 227.1(a), 227.501(a), 234.5, 241.40, 241.1040, 242.35, and 244.25.

References to Direct Endorsement Regulations

The proposed reorganization of, and revisions to the Direct Endorsement eligibility and processing requirements at §§ 200.163 and 200.164 would result in numerous cross-references in other regulations being inaccurate or obsolete. If a final rule is published with the Direct Endorsement regulations in part 203, the final rule also would modify or delete the following sections of title 24: §§ 200.141(b), 200.145(b), 200.146(a), 200.147, 200.148(a)(2), 200.150(b), 200.152(b), 200.810, 200.926(a)(2)(iv), 203.13(b), 203.27(a)(3)(v), 203.51, 203.255(b), 203.369 (a) and (b), 204.1, 204.3(b), 221.770, 233.5(a)(6), 234.12(b), 237.5.

Handbook Changes

Management Experience

The proposed rule at § 202.12(b) would republish the current regulation at § 203.2(b) which requires approved mortgagees to employ trained personnel, competent to perform their assigned responsibilities. The policy implementing this provision currently requires that a senior corporate officer of the mortgagee have a minimum of one year of acceptable experience in the mortgage business. Too often this has proven to be inadequate to provide the Department with assurance of prudent lending practices by the mortgagee, or to lessen the risk to the Department's insurance funds. If the proposed rule is adopted, HUD would amend its mortgagee approval handbook to require that a senior corporate officer, with authority over loan production or servicing, have three years experience in the mortgage business or the functional equivalent experience or training. The Department requests public comments on the types of experience which it should consider as equivalent to three years of mortgage lending. The new requirement would increase significantly the level of management experience and would, therefore, increase the lender's ability to originate quality insured mortgages, and ensure sound loan servicing practices. Additionally, proposed § 203.3(b)(1) retains the current requirement of five years experience for mortgagees which seek Direct Endorsement approval due to increased responsibilities associated with that program.

Increased Application and Recertification Fees

Under the existing regulation and proposed new § 202.12(k), the Department may set application and annual fees. Currently mortgagees are required to pay a $300 application fee for mortgagee approval, and a $100 fee for each branch office. In addition, mortgagees pay an annual recertification fee of $200 and $100 for each branch office. The Department proposes to establish a $1,000 application fee and $300 branch application fee. In addition, the annual recertification fee would be raised to $500 for the mortgagee, and $200 for each branch office. The Department has not increased these fees since 1983, while the operating costs of processing mortgagee applications and supervising mortgagees has increased. The proposed application fee also will be consistent with the fees charged by FNMA and FHLMC for approving mortgagees to participate in their programs.

Other Matters

Impact on the 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, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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. The eligibility

and performance requirements proposed by this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and it is expected to affect small and large entities equally.

Environmental Impact.

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 and copying Monday through Friday, 7:30 a.m. until 6 p.m. 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.

Regulatory Agenda.

This rule was listed as sequence number 1223 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17630, 17371), under Executive Order 12291 and the Regulatory Flexibility Act.

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 rule do not have federalism implications and, thus, are not subject to review under the Order. This rule is limited to imposing additional eligibility and performance requirements on private lenders. No programmatic or policy changes result from its promulgation which would affect existing relationship between the Federal government and State and 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, as those policies related to family concerns, will result from promulgation of this rule.

Public Reporting Burden

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 of 1980. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each collection of information in the proposed rule.

Description of inform collec.	No. of respondents	×	No. of responses per respondents	=	Total responses	Hours per response	=	Total hours
1. HUD-92001 202.11(a)(1) Application for Approval as Mortgagee for Superv./Non-Superv.	440		1		440	1.00		440
2. HUD-92001E 202.11(a)(1) Application for use by Loan Corres Mtgee	660		1		660	1.00		660
3. HUD-92001V 202.12(h)	* 8800		1		8800	25		2200
4. 203.4(b)(4) 202.14(c)(3) Audited Fin Statement (Only Non-Super and Loan Corres Mtgee)	2890		1		2890	16.00		** 46240
Totals	9900		1		9900			3300

Note: The above estimates for the use of these application forms were determined over a period of one (1) year. (Summary Report Number F51FLCM-N, dated 12-14-90)

*This number for the yearly verification report was based on the current mortgagee total in the same report previously noted.

**These respondents and hours were not included in the totals because other associations, etc., such as GNMA and FNMA, also require financial statements from applications for approval and annually thereafter to remain in an active status.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance program numbers are: 14.103, 14.108, 14.110, 14.112, 14.116, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.124, 14.126, 14.127, 14.128, 14.129, 14.130, 14.132, 14.133, 14.134, 14.135, 14.138, 14.139, 14.140, 14.141, 14.142, 14.149, 14.151, 14.155, 14.156, 14.157, 14.159, 14.162, 14.163, 14.164, 14.165, 14.166, 14.167, 14.168, 14.169, 14.170, 14.171, 14.172, 14.173, 14.174, 14.175, 14.177, 14.179 and 14.180.

List of Subjects

24 CFR part 24

Administrative practice and procedure, Government contracts, Grant programs, Government procurement, Loan programs, Drug abuse, Reporting and Recordkeeping requirements.

24 CFR part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

24 CFR part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 24, 25, 200, 202, 203, 207, 213, and 234 would be amended as follows:

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for 24 CFR part 24 would continue to read as follows:

Authority: Executive Order 12549, secs. 5151–5160, Drug-Free Workplace Act of 1988, Pub. L. 100–690, title V, subtitle D (41 U.S.C. 701 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 24.700, the first sentence would be revised to read as follows:

§ 24.700 General.

Officials who may order a limited denial of participation. A Regional Administrator, Office Manager, Director of an Office of Indian Programs or the Deputy Assistant Secretary for Single Family Housing is authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except HUD–FHA approved mortgagees. * * *

3. In § 24.710, introductory text of paragraph (a) would be republished and paragraph (a)(3) would be revised to read as follows:

§ 24.710 Period and scope of a limited denial of participation.

(a) The scope of a limited denial of participation shall be as follows:

* * * * *

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by the Deputy Assistant Secretary for Single Family Housing in which case the sanction may be imposed on a nationwide basis or a more restricted basis.

* * * * *

PART 25—MORTGAGEE REVIEW BOARD

4. The authority citation for 24 CFR part 25 would continue to read as follows:

Authority: Secs. 202 (c) and (d), 203(s), 211 and 536 of the National Housing Act (12 U.S.C. 1708 (c) and (d), 1709(s), 1715b and 1734f–14); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 25.9, paragraphs (h) and (u) would be revised to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(h) Failure of an approved mortgagee to meet or maintain the applicable net worth, liquidity or warehouse line of credit requirements of 24 CFR part 202;

* * * * *

(u) Failure to pay the application and annual fees required by 24 CFR part 202;

* * * * *

PART 200—INTRODUCTION

6. The authority citation for 24 CFR part 200 would continue to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. In § 200.152, paragraph (a) would be revised to read as follows:

§ 200.152 Endorsement for insurance.

(a) When it has been determined that the terms and conditions of the commitment have been fully complied with, the Secretary insures the mortgage and evidences the insurance by the issuance of a Mortgage Insurance Certificate for single family mortgages or by the signature of the Secretary's authorized agent in the endorsement panel on the mortgage for multifamily mortgages. After the mortgage is insured, the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are a part of the insurance contract.

* * * * *

§§ 200.163—200.164a [Removed]

8. Sections 200.163, 200.164 and 200.164a would be removed.

PART 202—APPROVAL OF LENDERS AND MORTGAGEES

9. 24 CFR part 202 would be amended by revising the heading of part 202 as set forth above; by redesignating current §§ 202.1—202.6 as with the heading of subpart A reading "Subpart A—Approval of title I Lending Institutions"; by adding a new subpart B; and by revising the authority citation to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); title I, sec. 2, National Housing Act (12 U.S.C. 1703); title II, secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1751, 1751b).

10. Part 202 would be amended by adding a new subpart B to read as follows:

Subpart B—Approval of Mortgagees

Sec.

§ 202.10 Definitions.

As used in this subpart:

(a) *Mortgage* means a mortgage as defined in § 203.17(a)(1), 203.43c(b)(1), 207.251(c) or § 234.1(d) of this chapter, or a loan authorized for insurance under the National Housing Act;

(b) *Mortgagee* means a mortgage lender which meets the definition of either a supervised mortgagee at § 202.13, a nonsupervised mortgagee at § 202.14, a loan correspondent at § 202.15, an investing mortgagee at § 202.16, or a governmental institution at § 202.17.

§ 202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.

(a) *Approval.* (1) A mortgagee may be approved for participation in the mortgage insurance programs authorized by the National Housing Act, except title I of the Act, upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary to support the request for approval. Approval of the application by the Secretary shall constitute an approval agreement between the mortgagee and the Secretary which includes:

(i) The mortgagee's agreement to comply at all times with the general approval requirements of § 202.12, and the special requirements for the class of mortgagee, at §§ 202.13, 202.14, 202.15, 202.16 or § 202.17, for which it was approved; and

(ii) The mortgagee's agreement that approval may be terminated as provided in § 202.11(d), in addition to any actions of the Mortgagee Review Board authorized by 24 CFR part 25.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs.

(3) Separate approval is required under subpart A of this part for

participation in the title I Program, and additional approval is required for participation in the title II Direct Endorsement program or for the Coinsurance Program as provided in § 203.3 of this chapter or 24 CFR part 204.

(4) Approval of mortgagees may be restricted to geographic areas designated by the Secretary or may be approved to operate on a nationwide basis.

(5) Approval to use authorized agents may be granted to a mortgagee which originates mortgages in areas determined by the Secretary to be under served or in accordance with § 202.17(d) of this part.

(b) *Recertification of approval.* On each anniversary of the approval of a mortgagee, the Secretary shall undertake a recertification procedure to determine whether continued approval is appropriate. The Secretary shall review the yearly verification report required by § 202.12(h)(3) and other pertinent documents, determine whether all application and annual fees which are due have been paid, and request any additional information needed to make a determination regarding continuation of approval. For each mortgagee which is approved before [effective date of this rule], the recertification procedure on the first anniversary of approval occurring after [effective date of this rule] shall include an approval agreement between the Secretary and the mortgagee in compliance with paragraph (a)(1) of this section.

(c) *Withdrawal and suspension of approval.* Mortgagee approval may be suspended or withdrawn by the Mortgagee Review Board as provided in 24 CFR part 25.

(d) *Termination of approval agreement.—(1) Definitions.* For purposes of this paragraph (d):

Normal rate for defaults and claims means the rate of defaults and claims on HUD insured on coinsured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which the mortgagee originates mortgages.

Defaults means insured mortgages in default for 90 or more days.

Claims means insured mortgages for which the mortgagee submits insurance claims to the Secretary.

(2) *Review of defaults and claims.* Every three months, the Secretary shall review the number of defaults and claims on mortgages originated by each mortgagee in the geographic area served by a HUD field office. The Secretary may also review the performance of a mortgagee's branch offices individually and may impose the sanctions provided for in this section on a branch as well as on a mortgagee as a whole.

(3) *Termination.* (i) If a mortgagee has a rate of defaults and claims on insured mortgages originated in an area during the Federal fiscal year which was in excess of 200 percent of the normal rate, and in excess of the national default and claim rate for insured mortgages, the Secretary shall notify the mortgagee that its approval agreement shall be terminated 30 days after notice was given, without action by the Mortgagee Review Board, except as provided in paragraph (d)(3) (ii) or (iii) of this section.

(ii) Before the Secretary sends the termination notice the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under served areas the Secretary may determine not to terminate the approval agreement.

(iii) Prior to termination the mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or his or her designee. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice and may place the mortgagee on credit watch status.

(4) *Credit watch status.* If a mortgagee has a rate of defaults and claims on insured mortgages originated in an area during a Federal fiscal year which was greater than 150 percent but equal to or less than 200 percent of the normal rate, the Secretary shall notify the mortgagee that it is being placed on credit watch status. Before the credit watch notice is sent the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under served areas the Secretary may determine not to place the mortgagee on credit watch status.

(5) *Effect of credit watch.* Insured mortgages originated during a six month period from the date of the credit watch notice will be reviewed for excessive default rates. A mortgagee will be removed from credit watch status if the rate of defaults and claims for the six month tracking period decreases to 150 percent or less one year after that six month tracking period. The approval agreement for a mortgagee subject to credit watch may be terminated if the mortgagee's rate of defaults and claims on insured mortgages originated in an area during the six month tracking period is more than 150 percent of the normal rate one year after that six month tracking period. The Secretary shall provide 30 days notice and an opportunity for an informal conference as required by § 202.11(d)(3) to a mortgagee which will have its approval agreement terminated subsequent to a credit watch.

(e) *Effects of termination.* Termination of the approval agreement shall not affect:

(1) The Secretary's ability to insure eligible mortgages, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage were approved before the termination by the Direct Endorsement mortgagee or by a firm commitment issued by the Secretary.

(2) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations associated with insured mortgages; or

(3) A mortgagee's right to apply for a new approval agreement provided that the general approval requirements at § 202.12 and the specific requirements of the § 202.13 through § 202.19 are met, and the Secretary determines that the underlying causes for termination have been satisfactorily remedied.

§ 202.12 General approval requirements.

To be approved for participation in the mortgage insurance programs authorized by the National Housing Act, except Title I of the Act, and to maintain approval, a mortgagee shall meet the general requirements of this section (except as provided in § 202.17(b)) and the specific requirements of § 202.13 through § 202.18, as appropriate.

(a) *Business form.* It shall be a corporation or other chartered institution, a permanent organization having succession or a partnership. All partnerships must meet the requirements of paragraphs (a)(1) through (a)(4) of this section, and the managing general partner shall comply with the requirements of paragraphs (b), (c) and (g) of this section.

(1) Each general partner must be a corporation or other chartered institution.

(2) One general partner must be designated as the managing general partner, have as its principal activity the management of the partnership and have exclusive authority to deal directly with the Secretary on the partnership's behalf. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from

the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(3) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages held by the partnership shall be transferred to a HUD approved mortgagee prior to the termination of the partnership. The partnership shall specifically be authorized to continue its existence in the event that a partner withdraws.

(4) The Secretary must be notified immediately of any amendments to the partnership agreement which would affect the partnership's actions under any mortgage insurance program administered by the Secretary.

(b) *Employees.* It shall employ competent personnel trained to perform their assigned responsibilities, including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with applicable regulations, to the extent the mortgagee engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee shall be corporate officers or shall otherwise be authorized to bind the mortgagee in matters involving the origination of mortgage loans.

(d) *Escrows.* It shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums, and shall deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(e) *Related laws.* It shall comply with the provisions of the Fair Housing Act, Executive Order 11063, Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974, and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(f) *Servicing.* It shall comply with the servicing responsibilities contained in subpart C of part 203 and in part 207 of this chapter, and with all other applicable regulations contained in this title 24, and with such additional conditions and requirements as the Secretary may impose.

(g) *Business changes.* It shall provide prompt notification, on a form prescribed by the Secretary, of all changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business.

(h) *Reports.* It shall file the following reports, records and documentation:

(1) Upon application for approval, a copy of the mortgagee's license to operate as a mortgage lender in the State or States in which it will originate insured mortgages, if there are applicable licensing requirements, or a certification that there are no applicable licensing requirements;

(2) An annual certification that the mortgagee is in compliance with State licensing requirements, if any;

(3) A yearly verification report on a form prescribed by the Secretary;

(4) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for two consecutive quarters or until the next recertification, which ever is the longer period; and

(5) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership or any transfer of control to a Federal or State supervisory agency.

(i) *Financial statements.* It shall, upon request by the Secretary, submit a copy of its latest financial statement, submit such information as the Secretary may request, and submit to an examination of that portion of its records which relates to its insured mortgage activities.

(j) *Quality control plan.* It shall implement a written Quality Control Plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding mortgage origination and servicing.

(k) *Fees.* A mortgagee, other than one meeting the requirements of § 202.17, shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for mortgage insurance, in such amounts and at such times the Secretary may require.

(l) *Ineligibility.* At the time of application and at all times while approved as a mortgagee, neither the applicant mortgagee nor any officer, partner, director, principal or employee of the applicant mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under part 24 or part 25 of this title, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the mortgagee to be an approved mortgagee;

(3) Be subject to unresolved findings as a result of HUD or other governmental audits or investigations; or

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(m) *Branch offices.* It may, only upon approval by the Secretary, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(n) *Net worth.* Except for investing mortgagees under § 202.16 and governmental agencies under § 202.17, it shall have and maintain a net worth, in assets acceptable to the Secretary, of the following amounts. The net worth of a mortgagee (excluding loan correspondents and sponsors) which originates but does not service insured mortgages shall be based on the volume of insured mortgages originated by the mortgagee during the mortgagee's previous fiscal year. The net worth of a mortgagee (excluding loan correspondents and sponsors) which services but does not originate insured mortgages shall be based on the average outstanding balance of insured mortgages serviced by the mortgagee during its preceding fiscal year. The net worth of a mortgagee (excluding loan correspondents and sponsors) which both originates and services insured mortgages shall be $1,000,000.

(1) $250,000 net worth, if the volume of insured mortgages was less than or equal to 25 million in one year;

(2) $500,000 net worth, if the volume of insured mortgages was more than $25 million, but not more than $50 million in one year;

(3) $750,000 net worth, if the volume of insured mortgages was more than $50 million, but not more than $100 million in one year; and

(4) $1,000,000 net worth, if the volume of insured mortgages was more than $100 million in one year; or

(5) $1,000,000 net worth, if the mortgagee is a sponsor for one or more loan correspondents under § 202.15; or

(6) $50,000 net worth, if the mortgagee is a loan correspondent, and an additional $25,000 net worth for each branch office of the loan correspondent up to a maximum of $250,000.

(o) *Effective date.* All mortgagees approved after [the effective date of this rule] shall be required to have a net worth of $250,000 for the first year of

approval. All loan correspondents approved before [the effective date of this rule] must comply with the net worth requirements in paragraph (n) of this section on [the effective date of this rule]. All mortgagees (other than loan correspondents) approved before [the effective date of this rule] must meet the net worth requirement of paragraph (n) of this section by [*two years from effective date of this rule*].

(p) *Conflict of interest.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration as may be approved by the Secretary may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(q) *Liquid assets.* It shall maintain liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

(r) *Fidelity bond.* Except for loan correspondents, the mortgagee shall maintain, for the benefit of the Secretary and the mortgagor, fidelity bond coverage acceptable to the Secretary and in an amount required by the Secretary, that assures the faithful performance of the fiduciary responsibilities of the mortgagee.

§ 202.13 Supervised mortgagees.

(a) *Definition.* A supervised mortgagee is a financial institution which is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(b) *General functions.* A supervised mortgagee may originate mortgages, submit applications for mortgage insurance, and may purchase, hold, service or sell insured mortgages.

(c) *Special requirement.* In addition to the general approval requirements in § 202.12, a supervised mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(d) *Trust companies.* Approval of a banking institution or a trust company as a supervised mortgagee shall constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 202.14 Nonsupervised mortgagees.

(a) *Definition.* A nonsupervised mortgagee is a financial institution that has as its principal activity the lending or investment of funds in real estate mortgages, and which is not approved under §§ 202.13, 202.15, 202.16, or 202.17.

(b) *General functions.* A nonsupervised mortgagee may submit applications for the insurance of mortgages and may purchase, hold, service or sell insured mortgages.

(c) *Special requirements.* In addition to the general approval requirements in § 202.12, a non-supervised mortgagee shall meet the following requirements:

(1) It shall have and maintain a warehouse line of credit in an amount of not less than $3 million, available for use in the origination of mortgages or other mortgage funding programs acceptable to the Secretary.

(2) It shall file an audit report with the Secretary within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Secretary), and at such other times as may be requested. Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, and analysis of the mortgagee's net worth, adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds;

(ii) A report on compliance tests prescribed by the Secretary; and

(iii) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

§ 202.15 Loan correspondents.

(a) *Definitions.* A *loan correspondent* is a mortgagee approved by the Secretary to originate mortgages for sale or transfer to a sponsor or sponsors.

A *sponsor* is a mortgagee which holds a valid approval agreement, is approved to participate in the Direct Endorsement program, and meets the $1 million net worth requirement at § 203.12(n)(4) of this chapter.

(b) *General functions.* A loan correspondent may submit applications for the insurance of mortgages. A long correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Secretary, nor may it hold, purchase or service insured mortgages in its own portfolio.

(c) *Special requirements.* In addition to the general approval requirements in § 202.12, a loan correspondent shall meet the following requirements, as applicable:

(1) A loan correspondent shall close all mortgages in its own name. For mortgages not processed through Direct Endorsement under § 203.7 and § 203.255(a) of this chapter, the mortgages must be both underwritten and closed in the loan correspondent's own name. For mortgages processed through Direct Endorsement under § 203.5 and § 203.255(b) of this chapter, underwriting shall be the responsibility of the Direct Endorsement sponsor.

(2) Its approval must be requested by one or more sponsors that are approved mortgagees under § 202.13, § 202.14, or § 202.17.

(3) It shall comply with the warehouse line of credit requirements of § 202.14(c)(1), unless there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(4) A loan correspondent and its sponsor or sponsors shall promptly notify the Secretary upon termination of any loan correspondent agreement.

(5) It shall file audit reports in accordance with § 202.14(c)(3).

(6) A sponsor and a loan correspondent shall have a principal-agent relationship.

§ 202.16 Investing mortgagees.

(a) *Definition and general functions.* An investing mortgagee is an organization, including a charitable or nonprofit institution or pension fund, that is not approved under other sections of this part. It may purchase, hold or sell insured mortgages, but may not submit applications for the insurance of mortgages. An investing mortgagee may not service insured mortgages without prior approval of the Secretary.

(b) *Special requirements.* In addition to the general approval requirements of § 202.12, an investing mortgagee shall meet the following special requirements:

(1) It has lawful authority to purchase insured mortgages in its own name.

(2) It has, or has arranged for, funds sufficient to support a projected investment in real estate mortgages of at least $1 million.

§ 202.17 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.

(a) *Definition and general functions.* Subject to the general approval requirements of § 202.12, a Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association may be an approved mortgagee and may originate, purchase, service or sell insured mortgages to the extent authorized by applicable Federal, State or local law.

(b) *Public Housing Authorities and State Housing Agencies.* Under such terms and conditions as the Secretary may prescribe, Public Housing Agencies or their instrumentalities, and State Housing agencies may be approved as mortgagees for the purpose of originating and holding insured multifamily mortgages funded by issuance of tax exempt obligations by the agency.

(c) *Audit requirements.* Since the insuring of mortgages under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

(d) *Authorized agents.* A mortgagee approved under this section may, with the approval of the Secretary, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

§ 202.18 Approval for servicing.

Mortgagees approved under § 202.13 (supervised mortgagees), § 202.14 (non-supervised mortgagees), and § 202.17 (governmental institutions) may service insured mortgages only if approved for servicing by the Secretary.

11. Section 203.8 would be redesignated as a new § 202.19, and all references to "Commissioner" in the newly redesignated § 202.19 would be changed to "Secretary," and § 202.19(a)(1) would be revised to read as follows:

§ 202.19 Report requirements.

(a) *Definitions.* For the purpose of this section·

(1) *Normal rate* for early serious defaults and early claims means the rate of defaults and claims on HUD insured or coinsured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which the mortgagee originates mortgages.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

12. The authority citation for 24 CFR part 203 would continue to read as follows:

Authority: Secs. 203, 211, 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).

13. 24 CFR part 203 would be amended by revising the part heading as set forth above; by revising the heading of subpart A to read "Subpart A—Eligibility Requirements and Underwriting Procedures"; by revising the first center heading under subpart A entitled "Approval of Mortgages" to read "Direct Endorsement Process"; by revising the second center heading under subpart A entitled "Application and Commitment" to read "Miscellaneous Regulations"; by revising §§ 203.1, 203.3, 203.5, and 203.7; and by removing and reserving §§ 203.2, 203.4, 203.6, 203.9, 203.10, 203.11, and 203.13; to read as follows:

§ 203.1 Underwriting procedures.

The principal underwriting procedure for single family mortgages is the Direct Endorsement procedure described in § 203.5. Processing through HUD offices as described in § 203.7, with issuance of commitments, is available only for mortgages which are not eligible for Direct Endorsement processing under § 203.5(b), or to the extent required by § 203.3(b)(5), § 203.3(d)(1), or as determined by the Secretary.

§ 203.3 Approval of mortgagees for Direct Endorsement.

(a) *Direct Endorsement approval.* To participate in the Direct Endorsement program set forth in § 203.5, a mortgagee must be an approved mortgagee meeting the requirements of §§ 202.13, 202.14 or 202.17 of this chapter and this section. A mortgagee shall submit an application to each HUD office in whose jurisdiction the mortgagee seeks to process mortgages pursuant to § 203.5.

(b) *Special requirements.* The mortgagee must establish that it meets the following qualifications.

(1) The mortgagee has five years of experience in the origination of single family mortgages. The Secretary will approve a mortgagee with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages.

(2) The mortgagee has on its permanent staff an underwriter approved by the Secretary, and authorized by the mortgagee to bind the mortgagee on matters involving the origination of mortgages through the Direct Endorsement procedures. The technical staff utilized by the mortgagee, including appraisers, construction analysts, inspectors, architects and engineers, must also be approved by the Secretary. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a panel approved by the Secretary, except that an independent appraiser or appraisal firm may be used as authorized by § 203.5(e).

(3) The mortgagee's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements.

(4) The mortgagee must submit initially 15 mortgages, processed in accordance with the requirements set forth under § 203.5 and § 203.255. The documents required by § 203.255 will be reviewed by the Secretary and, if acceptable, commitments will be issued prior to endorsement of the loans for insurance. If the underwriting and processing of these 15 mortgages is satisfactory, then the mortgagee may be approved to close subsequent mortgages and submit them directly for endorsement for insurance in accordance with the process set forth in § 203.255. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation in the program, or for continued pre-endorsement review of a mortgagee's submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (d)(2) of this section.

(5) The mortgagee shall promptly notify those HUD offices which have granted approval under this section of any changes that affect qualifications under this section.

(c) *Approval of underwriters.* An underwriter may be approved by the Secretary to underwrite Direct Endorsement mortgages nationwide. An underwriter also may be approved by each HUD office in whose jurisdiction

the underwriter seeks to conduct business.

(d) *Mortgagee sanctions.* Depending upon the nature and extent of the noncompliance with the requirements applicable to the Direct Endorsement process, as determined by the Secretary, the Secretary may take any of following actions:

(1) *Probation.* The Secretary may place a mortgagee on Direct Endorsement probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the Direct Endorsement procedure. Such probation is distinct from probation imposed by the Mortgagee Review Board under 24 CFR part 25. During the probation period specified by this section, the mortgagee may continue to process Direct Endorsement mortgages, subject to conditions required by the Secretary. The Secretary may require the mortgagee to:

(i) Process mortgages in accordance with paragraph (b)(4) of this section;

(ii) Submit to additional training;

(iii) Make changes in the Quality Control Plan required by § 202.12(j) of this chapter; and

(iv) Take other actions, which may include, but are not limited to, periodic reporting to the Secretary, and submission to the Secretary of internal audits.

(2) *Termination of approval of Direct Endorsement mortgagees.* (i) A mortgagee's approval to participate in the Direct Endorsement program may be terminated in a particular jurisdiction by the local HUD office or on a nationwide basis by HUD Central Office. The HUD office instituting the termination action shall provide the mortgagee with written notice of the grounds for the action and of the right to an informal hearing before the office initiating the termination action. Such hearing shall be expeditiously arranged, and the mortgagee may be represented by counsel. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

(ii) After consideration of the materials presented, the decision maker shall advise the mortgagee in writing whether the termination is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Deputy Assistant Secretary for Housing or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

§ 203.5 Direct Endorsement process.

(a) *General.* Under the Direct Endorsement program, the Secretary does not review applications for mortgage insurance or issue conditional or firm commitments, except to the extent required by § 203.3(b)(4) or § 203.3(d)(1). Under this program, the mortgagee determines that the proposed mortgage is eligible for insurance under the applicable program regulations, and submits the required documents to the Secretary in accordance with the procedures set forth in § 203.255. This subpart provides that certain functions shall be performed by the Secretary (or Commissioner), but the Secretary may specify that a Direct Endorsement mortgagee shall perform such an action without specific involvement or approval by the Secretary, subject to statutory limitations. In each case, the Direct Endorsement mortgagee's performance is subject to pre-endorsement and post-endorsement review by the Secretary under §§ 203.255 (c) and (e).

(b) *Eligible programs.* All single family mortgages authorized for insurance under the National Housing Act shall be originated through the Direct Endorsement program, except mortgages authorized under sections 203(n), 203(p), 213, 221 (i) or (j), 225, 233, 237, 247, 248, 255, 809 or 810 of the National Housing Act, and any other insurance programs announced by **Federal Register** notice. The provision contained in 24 CFR 221.55 regarding deferred sales to displaced families is not available in the Direct Endorsement program.

(c) *Underwriter due diligence.* A Direct Endorsement mortgagee shall exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 202.12(j) of this chapter. The Secretary shall publish guidelines for Direct Endorsement underwriting procedures in a handbook, which shall be provided to all mortgagees approved for the Direct Endorsement procedure. Compliance with these guidelines is deemed to be the minimum standard of due diligence in underwriting mortgages.

(d) *Mortgagor's income.* The mortgagee shall evaluate the mortgagor's credit characteristics, adequacy and stability of income to meet the periodic payments under the mortgage and all other obligations, and the adequacy of the mortgagor's available assets to close the transaction, and render an underwriting decision in accordance with applicable regulations, policies and procedures.

§ 203.7 Commitment process.

For single family mortgage programs which are not eligible for Direct Endorsement processing under § 203.5, the mortgagee shall submit an application for mortgage insurance on a form prescribed by the Secretary, prior to making the mortgage. If (a) a mortgage for a specified property has been accepted for insurance through issuance of a conditional commitment by the Secretary or a certificate of reasonable value by the Secretary of Veterans Affairs, and (b) a specified mortgagor and all other proposed terms and conditions of the mortgage meet the eligibility requirements for insurance as determined by the Secretary, the Secretary shall approve the application for insurance by issuing a firm commitment setting forth the terms and conditions of insurance will be issued upon a form prescribed by the Secretary.

§ 203.8 [Redesignated as § 202.19]

13a. Section 203.8 would be redesignated as § 202.19.

14. Section 203.14 would be revised to read as follows:

§ 203.14 Builders' warranty.

Applications relating to proposed construction must be accompanied by an agreement in form satisfactory to the Secretary, executed by the seller or builder or such other person as the Secretary may require, and agreeing that in the event of any sale or conveyance of the dwelling, within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in form satisfactory to the Secretary warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Secretary) on which the Secretary has based his valuation of the dwelling. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Secretary with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

15. Section 203.17(d) would be revised to read as follows:

§ 203.17 Mortgagee provisions.

* * * * *

(d) *Maturity.* The mortgage shall have a term of not more than 30 years from the date of the beginning of amortization.

* * * * *

16. Section 203.27(d) would be revised to read as follows:

§ 203.27 Charges, fees or discounts.

* * * * *

(d) Before the insurance of any mortgage, the mortgagee shall furnish to the Secretary a signed statement in a form satisfactory to the Secretary listing any charge, fee or discount collected by the mortgagee from the mortgagor. All charges, fees or discounts are subject to review by the Secretary both before and after endorsement under § 203.255.

* * * * *

17. Section 203.248 would be revised to read as follows:

§ 203.248 Waivers.

On a case-by-case basis, the Secretary may waive any requirement of this subpart not required by statute, if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds for forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be redelegated.

18. Section 203.249 would be revised to read as follows:

§ 203.249 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and shall not adversely affect the interest of a mortgagee on any mortgage or loan to be insured on which either the Direct Endorsement mortgagee has approved the mortgagor and all terms and conditions of the loan or the Secretary has issued a firm commitment. In addition, such amendment shall not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement underwriter.

19. Section 203.255 would be revised to read as follows:

§ 203.255 Insurance of mortgage.

(a) *Endorsement without Direct Endorsement processing.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, the Secretary will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the single family Direct Endorsement program under § 203.5, the mortgagee shall submit to the Secretary, within 30 days after the date of closing of the loan or such additional time as permitted by the Secretary, the documentation and certifications listed in this paragraph (b):

(1) Property appraisal upon a form prescribed by the Secretary (or for proposed construction, a HUD conditional commitment or the Department of Veterans Affairs certificate of reasonable value) and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage upon a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with HUD underwriting requirements, and incorporating each of the underwriter certification items which apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(6) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(7) Where applicable, a certificate of intent to occupy by military personnel;

(8) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the appropriate local government official that the property meets applicable code requirements;

(9) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with 24 CFR 200.926d(f);

(10) For proposed construction if the mortgage (excluding financed mortgage insurance premium) exceeds a 90 percent loan to value ratio, evidence that the mortgagee qualifies for a higher ratio loan under one of the applicable provisions in the appropriate regulations;

(11) A mortgagee certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of this paragraph (b). The certification shall incorporate each of the mortgagee certification items which apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees; and

(12) Such other documents as the Secretary may require.

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents to determine:

(1) That the mortgage is executed on a form which meets the requirements of the Secretary;

(2) That the mortgage maturity meets the requirements of the applicable program;

(3) That the stated mortgage amount does not exceed the maximum mortgage amounts as most recently published in the **Federal Register**;

(4) That all documents required by paragraph (b) of this section are submitted;

(5) That all necessary certifications are made in accordance with paragraph (b) of this section;

(6) That there is no mortgage insurance premium, late charges or interest due to the Secretary; and

(7) That there is no information known to the Secretary indicating that:

(i) Any certification or other required document is incomplete, false, misleading, or constitutes fraud or misrepresentation on the part of any party; or

(ii) The mortgage is otherwise ineligible for insurance.

If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this fact, and include the reasons thereof and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c), the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to 24 CFR part 25.

20. Section 203.502(a) would be revised to read as follows:

§ 203.502 Responsibility for servicing.

(a) After [one year from effective date of final rule], servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The servicer must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Secretary for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Secretary for its actions as a servicer.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

21. The authority citation for 24 CFR part 207 would continue to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

22. A new § 207.263 would be added to read as follows:

§ 207.263 Responsibility for servicing.

After [one year after effective date of this rule] servicing of insured mortgages must be performed by a mortgagee which is approved by HUD to service insured mortgages.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

23. The authority citation for 24 CFR part 213 would continue to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 213.503, 213.504 and 213.505 [Removed]

24. The center heading under subpart C, entitled "Application and Commitment", and §§ 213.503, 213.504 and 213.505 would be removed and reserved.

25. The center heading under subpart C entitled "Approval of Mortgagees" and § 213.502 would be revised to read as follows:

Application for Insurance

§ 213.502 Processing for insurance.

Mortgages under this part 213 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at part 203 of this chapter, unless otherwise determined by the Secretary.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

26. The authority citation for 24 CFR part 234 would continue to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Section 234.520(a)(2)(ii) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

§§ 234.11 and 234.12 [Removed]

27. Sections 234.11 and 234.12 would be removed and reserved, and the center heading under Subpart A entitled "Application and Commitment" and § 234.10 would be revised to read as follows:

Application for Insurance

§ 234.10 Processing for insurance.

Mortgages under this part 234 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at 24 CFR part 203, unless otherwise determined by the Secretary.

Dated: May 10, 1991.

Alfred A. DelliBovi,

Deputy Secretary.

[FR Doc. 91–14961 Filed 6–24–91; 8:45 am]

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federal register

Tuesday
June 25, 1991

Part IX

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 575
Iraqi Sanctions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals of the Government of Iraq.

SUMMARY: The Iraq Sanctions Regulations, 31 CFR part 575 (56 FR 2112, Jan. 18, 1991—the "Regulations"), are being amended to add seven names to and remove two names from appendix A, the list of Individuals and Organizations Determined to be Within the Term "Government of Iraq" (Specially Designated Nationals of Iraq). Appendix A contains the names of companies and individuals which the Director of the Office of Foreign Assets Control has determined are owned or controlled by or acting or purporting to act directly or indirectly for the Government of Iraq. This list may be expanded at any time.

EFFECTIVE DATE: June 25, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566–5021.

SUPPLEMENTARY INFORMATION: The Regulations were issued by the Treasury Department to implement Executive Orders No. 12722 and 12724 of August 2 and August 9, 1990, in which the President declared a national emergency with respect to Iraq, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act (22 U.S.C. 287c), and ordering specific measures against the Government of Iraq. An amendment to the regulations (56 FR 13584, Apr. 3, 1991) added a new appendix A, the list of Individuals and Organizations Determined to be Within the Term "Government of Iraq" (Specially Designated Nationals of Iraq), and a new appendix B, the list of Merchant Vessels Registered, Owned, or Controlled by the Government of Iraq or by Persons Acting Directly or Indirectly on Behalf of the Government of Iraq.

Section 575.306 of the Regulations defines the term "Government of Iraq" to include

(a) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

Determinations that persons fall within this definition are effective upon the date of determination by the Director, Office of Foreign Assets Control ("FAC"). Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule adds seven names to and removes two names from appendix A to part 575 to provide public notice of a list of persons, known as "specially designated nationals" of the Government of Iraq. The list consists of companies and individuals which the Director of the Office of Foreign Assets Control has determined to be owned or controlled by or to be acting or purporting to act directly or indirectly for the Government of Iraq, and which thus fall within the definition of the "Government of Iraq" contained in § 575.306 of the Regulations. The persons included in appendix A are subject to all prohibitions applicable to other components of the Government of Iraq. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the persons that might be owned or controlled by the Government of Iraq or acting as officers, agents, or front organizations for Iraq, and which thus qualify as specially designated nationals of the Government of Iraq. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly for, the Government of Iraq. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Iraq or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Libya, North Korea, and Vietnam).

Section 586E of the Iraq Sanctions Act of 1990, Public Law 101–513, 104 Stat. 2049, provides for civil penalties not to exceed $250,000 for violations of the Regulations and fines of up to $1,000,000 and imprisonment for up to 12 years for willful violations of the Regulations. In addition, section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)) provides for the forfeiture of any property involved in a violation of the Regulations.

Pursuant to the Regulations, PMK/QUDOS (Liverpool Polytechnic), England, United Kingdom, and Sollatek, England, United Kingdom, were included in appendix A to the Regulations, published in the **Federal Register** on April 3, 1991 (56 FR 13584) as specially designated nationals of the Government of Iraq. Following a review of additional information and extensive consultations with the British Government, it has been determined that PMK/QUDOS (Liverpool Polytechnic) and Sollatek are not within the scope of the definition of the "Government of Iraq" as defined in § 575.306 of the Regulations; and, therefore, are removed from the list of specially designated nationals of the Government of Iraq.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign trade, Iraq, Penalties, Reporting and recordkeeping requirements, Securities, Specially designated nationals, Travel restrictions.

PART 575—IRAQI SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 575 is amended as set forth below:

1. The Authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Appendix A—Individuals and Organizations Determined to be Specially Designated Nationals of the Government of Iraq

2. Appendix A to part 575 is amended by removing the numerical designations from the list of companies and the list of indivi luals.

3. Appendix A to part 575 is amended by removing the following names from the list of companies:

PMK/QUDOS (Liverpool Polytechnic), England, United Kingdom.
Sollatek, England, United Kingdom.

4. Appendix A to part 575 is amended by adding the following names in their proper alphabetical positions to the list of individuals:

Al-Majid, Ali Hassan, Baghdad, Iraq
Al-Majid, Hussein Kamel Hassan, Baghdad, Iraq
Al-Takriti, Barzan Ibrahim Hassan, Geneva, Switzerland
Al-Takriti, Sabawi Ibrahim Hassan, Baghdad, Iraq
Al-Takriti, Watban, Baghdad, Iraq
Hussein, Udai Saddam, Baghdad, Iraq
Jasim, Latif Nusayyif, Baghdad, Iraq

Dated: May 17, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 22, 1991.

Nancy L. Worthington,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91–15008 Filed 6–20–91; 12:49 pm]
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federal register

Tuesday
June 25, 1991

Part X

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 6, et al.

Federal Acquisition Regulation; Miscellaneous Amendments; Final Rules and Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52

[Federal Acquisition Circular 90-5]

Federal Acquisition Regulation; Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rules and interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-5 to amend the Federal Acquisition Regulation (FAR)—

I. To add 6.302-1(c) and revise 10.004(b)(2) to emphasize that the use of "brand name description" specifications in procurements is a restriction on "full and open" competition under the Competition in Contracting Act (CICA).

II. To provide procedural guidance for contracting officers to follow when they receive a bid from a firm on the List of Parties Excluded from Procurement Programs;

III. To amend 20.302(a) to clarify that the use of Labor Surplus Area clauses is not appropriate in acquisitions for petroleum and petroleum products because there is no likelihood of labor surplus area subcontracting under such contracts.

IV. To set forth a new rule on the allowability of postretirement benefits other than pensions (PRB) on U.S. Government contracts.

V. To clarify the definition of Architect-Engineer (A-E) Services;

VI. To require prime contractors to require each first tier subcontractor to disclose, to the prime contractor, whether the subcontractor is or is not debarred, suspended, or proposed for debarment by the Federal Government.

VII. To provide an information item regarding procurement integrity and to perform several technical amendments to the FAR.

DATES: *Effective Date:* July 25, 1991, except for § 52.209-6 (interim rule, Item VI) which is effective June 25, 1991.

Comment Date: Comments on the interim rule (Item VI, FAR case 91-16) should be submitted to the FAR Secretariat at the address shown below on or before August 26, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90-5 and the FAR case number in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-5.

SUPPLEMENTARY INFORMATION:

LIST OF ITEMS

Item	Subject	FAR Case	DAR Case	Analyst
I	Brand Name Description Procurements	91-24	90-35	O'Neill.
II	Effect of Debarment/Suspension on Bids/Offers	90-27	90-418	Loeb.
III	Utilization of LSA Concerns	90-44	90-431B	Scott.
IV	Postretirement Benefits Other Than Pensions	89-70	89-07	Olson.
V	Definition of Architect-Engineer Services	89-25	88-316	O'Neill.
VI	Disclosure Requirement Relating to Subcontractors	91-16	90-311	Loeb.

A. Background

I. Brand Name Description Procurements (FAR Case 91-24)

The addition of 6.302-1(c) and revision of 10.004(b)(2) result from a recommendation made by the General Accounting Office in two reports on Federal agencies' efforts to implement the Competition in Contracting Act (CICA) (GAO/NSIAD-87-145, August 1987, and GAO/NSIAD-90-104, May 1990). The rule is published as a final rule without publication as a proposed rule because it clarifies existing coverage.

For further information pertaining to this case, contact Mr. Jack O'Neill at (202) 501-3856.

II. Effect of Debarment/Suspension on Bid/Offers (FAR Case 90-27)

The FAR at 9.405 did not provide a uniform approach for handling bids/offers submitted by contractors debarred, suspended, proposed for debarment or declared ineligible from award of Government contracts. The councils believed that a consistent policy should be adopted. This change to the FAR does so. The proposed rule was published in the **Federal Register** (55 FR 22284) on May 31, 1990.

For further information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547.

III. Utilization of LSA Concerns (FAR Case 90-44)

The FAR at 20.302 requires inclusion of Labor Surplus Area clauses in solicitations and contracts. The Councils believe that inclusion of those clauses in acquisitions for petroleum and petroleum products is not appropriate since any subcontracting would normally be in the locale of the refinery. The proposed rule was published in the **Federal Register** (55 FR 38790) on September 20, 1990. There are no substantive differences between the proposed rule and the final rule.

For further information pertaining to this case, contact Ms. Shirley Scott at (202) 501-0168.

IV. Post-Retirement Benefits Other Than Pensions (FAR Case 89-70)

A proposed rule was published in the **Federal Register** on November 9, 1989 (54 FR 47182), to set forth criteria for the allowability of the costs of postretirement benefits other than pensions (PRB) under Government contracts. The rule results from a new Financial Accounting Standards Board financial reporting requirement that retiree health and other PRB costs be recognized during employees' active working lives. The purpose of the FAR rule is to establish a clear requirement that contractor accruals of PRB costs must be funded to be allowable.

The final rule differs from the proposed rule in that PRB coverage in FAR 31.205-6(m) has been moved to a new paragraph 31.205-6(o) which more

clearly defines the benefits covered. PRB calculations must be performed in accordance with principles and practices promulgated by the Actuarial Standards Board (31.205-6(o)(2)). Any PRB costs assigned to the current year, but not funded or liquidated by tax return time, are unallowable in any future period (31.205-6(o)(2)), and increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which the costs are assignable are unallowable (31.205-6(o)(3)).

For further information pertaining to this case, contact Mr. Jeremy Olson at (202) 501-3221.

V. Definition of Architect-Engineer Services (FAR Case 89-25)

The Brooks Act (Pub. L. 92-582), passed in 1972, established as Federal Government policy that all requirements for architect-engineer (A-E) services must be publicly announced and that contracts for those services would be negotiated on the basis of demonstrated competence and qualification for the type of professional services required, at fair and reasonable prices. Since passage of the Brooks Act, various change were made, both by legislation and by Comptroller General decisions, that caused inconsistent interpretations of the definition of A-E services. Finally, on November 17, 1988, the Congress enacted the OFPP Act Amendments of 1988 (Pub. L. 100-679), which clarified the definition of A-E services in the Brooks Act. An interim rule was published in the **Federal Register** (54 FR 13332, March 31, 1989) amending FAR part 36 to implement the OFPP Act Amendments. Public comments were received and considered in drafting this final rule.

For further information pertaining to this case, contact Mr. Jack O'Neill at (202) 501-3856.

VI. Disclosure Requirement Relating to Subcontractors (FAR Case 91-16)

Section 813 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101-510) required the Department of Defense to prescribe rules to require each prime contractor to require each subcontractor to whom it awards a contract, in excess of the small purchase limitation, to disclose to the contractor whether the subcontractor is or is not, as of the date of award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The change to 52.209-6 is issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act, November 5, 1990. The change is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

For further information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547.

B. Regulatory Flexibility Act

(FAR Case 91-24)

The amendment to 6.302-1 and revision to 10.004(b)(2) 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.*, because the rule does not constitute a significant FAR revision within the meaning of FAR 1.501. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities will be considered in accordance with 5 U.S.C. 601 of the Act. Such comments must be submitted separately and cite FAR Case 91-24 (FAC 90-5) in correspondence.

(FAR Case 90-27)

The amendments to FAR 9.405, 9.405-2, and 14.404-2 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.*, because it merely provides procedural and policy guidance to contracting officers, and imposes no requirements of any kind upon small entities.

(FAR Case 90-44)

The amendments to FAR 20.302 concerning the use of labor surplus area subcontracting clauses in solicitations and contracts for petroleum and petroleum products, and the introductory text of the clause at 52.220-3 are not expected to have a significant impact on a substantial number of small entities because there is no likelihood of labor surplus area subcontracting in such contracts. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. However, public comments were solicited on September 20, 1990 (55 FR 38790). No comments were received that took issue with the Regulatory Flexibility Act statement.

(FAR Case 89-70)

The amendments to the postretirement benefits coverage levies no additional requirements on contractors. The amendments clarify a condition of allowability of costs, namely funding or payment, upon contractors who wish to be reimbursed under Government contracts. Therefore, 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.*, because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply.

(FAR Case 89-25)

The amendments to FARs 36.102 and 36.601 implement a statutory amendment that Congress has stated is intended to clarify, rather than expand, the statutory definition of architect-engineer services. Accordingly, the amendments are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The change imposes no requirements of any kind upon small entities.

(FAR Case 91-16)

The revision of 52.209-6 is not expected to have a significant cost or administrative impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires prime contractors to obtain from subcontractors a disclosure as to whether or not they are debarred, suspended, or proposed for debarment.

C. Paperwork Reduction Act

(FAR Case 91-24)

The amendment to 6.302-1 and revision to 10.004(b)(2) do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 90-27)

The amendments to FAR 9.405, 9.405-2, and 14.404-2 do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 90-44)

The amendments to FAR 20.302 and the clause at 52.220-3 do not involve any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 89–70)

The amendments to the PRB coverage do not impose any reporting or recordkeeping requirements which require approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 89–25)

The changes made to clarify the definition of architect-engineer services do not impose any reporting or recordkeeping requirements which require approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 91–16)

The revision of 52.209–6 does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

(FAR Case 91–16)

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAR case 91–16, Item VI of FAC 90–5, as an interim rule. This action is necessary as a result of section 813 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101–510), which requires DOD to prescribe regulations requiring that DOD contractors must require subcontractors to disclose whether or not they are debarred or suspended from Federal Government contracting or subcontracting. The date of enactment was November 5, 1990. As a matter of policy, the regulation is being applied to all executive agencies. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52

Government procurement.

Dated: June 17, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–5 is effective July 25, 1991.

Dated: June 11, 1991.

D.S. Parry,

Captain, USN Acting Director of Defense Procurement.

Dated: June 17, 1991.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, GSA.

Dated: June 7, 1991.

Don G. Bush,

Acting Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 90–5 amends the Federal Acquisition Regulation as specified below.

I—Brand Name Description Procurements (FAR Case 91–24)

Section 6.302–1 is amended by adding a new paragraph (c) to emphasize that the use of "brand name description" specifications in procurements is a restriction on full and open competition under the Competition in Contracting Act (CICA) and requires a Justification and Approval (J&A). Two changes are made to 10.004(b)(2) to clarify existing coverage on "brand name description" procurements. The first adds the term "brand name description" to tie that term, as defined in 10.001, to the restrictions specified in 10.004(b)(2). The second includes a reference to 6.302–1 to clarify that the determination "in accordance with agency procedures" in 10.004(b)(2) is a J&A under 6.302–1.

II—Effect of Debarment/Suspension on Bids/Offers (FAR Case 90–27)

Section 9.405 is amended to provide procedural guidance by adding paragraph (d) for contracting officers to follow when they receive a bid from a firm on the List of Parties Excluded from Procurement Programs. A conforming change to 14.404–2 is also being made.

III—Labor Surplus Area Concerns (FAR Case 90–44)

FAR 20.302 is amended to clarify that the use of Labor Surplus Area clauses is not appropriate in acquisitions for petroleum and petroleum products. FAR 52.220–3, Utilization of Labor Surplus Area Concerns, is amended to delete the prescription for use of the clause.

IV—Postretirement Benefits Other Than Pensions (FAR Case 89–70)

Sections 15.804–8, 31.205–6, 52.216–7 and 52.232–16 are amended and 52.215–39 is added to establish funding as a required condition of cost allowability for accruals of postretirement benefits other than pensions (PRB). The final rule also provides for the Government to recover an equitable share of any previously reimbursed PRB costs which revert or inure to the contractor because of a plan change or termination.

V—Definition of Architect-Engineer Services (FAR Case 89–25)

FAR § 36.102 is amended and subpart 36.6 is revised to clarify which services are to be procured using Brooks Act procedures.

VI—Disclosure Requirement Relating to Subcontractors (FAR Case 91–16)

The revision of 52.209–6 is issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act, November 5, 1990, and is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

VII—Technical Amendments

Procurement Integrity

A number of otherwise successful bidders have been rejected as nonresponsive for failing to sign the Procurement Integrity certifications in the clauses at 52.203–8 and 52.203–9. The GAO has upheld these rejections. This FAC incorporates a technical amendment which adds lines to the blank spaces at the end of those certification forms to emphasize that a signature is required to be placed at the end of the certification statements.

Miscellaneous Amendments

Technical amendments have also been made to FAR §§ 8.405–1, 9.405–2, 31.205–10, 32.610, 32.613, 32.614–1, 32.616, 39.002, 52.219–19, 52.219–21, and 52.220–1 to update references and amounts, to replace inaccurate terms, and to add an appendix A to part 39 of the FAR.

Editorial Note

In the looseleaf edition, part III of the appendix to part 30 was inadvertently placed at the end of part 30 preceding parts I and II of the appendix. The FAR Secretariat will issue corrected pages at a later date.

Therefore, 48 CFR parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302–1 is amended by redesignating existing paragraph (c) as (d) and adding new paragraph (c) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with FAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405–1 [Amended]

3. Section 8.405–1 is amended in the fourth sentence of paragraph (a) by correcting the reference "13.106(c)" to read "13.106".

PART 9—CONTRACTOR QUALIFICATIONS

4. Section 9.405 is amended by adding paragraph (d) to read as follows:

9.405 Effect of listing.

* * * * *

(d) (1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency's head or designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the acquiring agency's head or designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

5. Section 9.405–2 is amended by revising the second sentence of the introductory text of paragraph (b) to read as follows:

9.405–2 Restrictions of subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 10.004 is amended by revising paragraph (b)(2) to read as follows:

10.004 Selecting specifications or descriptions for use.

* * * * *

(b) * * *

(2) Purchase descriptions shall not be written so as to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(i) The particular brand name, product, or feature is essential to the Government's requirements, and that other companies' similar products, or products lacking the particular feature, would not meet the minimum requirements for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

* * * * *

PART 14—SEALED BIDDING

7. Section 14.404–2 is amended by revising paragraph (h) to read as follows:

14.404–2 Rejection of individual bids.

* * * * *

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made (see subpart 9.4).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

8. Section 15.804–8 is amended by adding paragraph (f) to read as follows:

15.804–8 Contract clauses.

* * * * *

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to subpart 32.2.

PART 20—LABOR SURPLUS AREA CONCERNS

9. Section 20.302 is amended by removing the word "and" from the end of paragraph (a)(1); removing the period from the end of paragraph (a)(2) and inserting the punctuation and word "; and" in its place; and adding paragraph (a)(3) to read as follows:

20.302 Contract clauses.

(a) * * *

(3) Contracts with the petroleum and petroleum products industry.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

10. Section 31.205–6 is amended by removing from the third sentence of paragraph (m)(1) the word "elsewhere" and inserting in its place "otherwise"; and adding paragraph (o) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care;

life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable in the current year, PRB costs must be paid either to (i) an insurer, provider, or other recipient as current year benefits or premiums, or (ii) an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The costs in paragraph (o)(2)(ii) of this subsection must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board, and be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(3) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(4) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to subpart 31.2.

31.205–10 [Amended]

11. Section 31.205–10 is amended in paragraph (a)(1)(ii)(C) by removing the reference "50 U.S.C. App. 1215(b)(2)" and inserting in its place "Public Law 92–41".

PART 32—CONTRACT FINANCING

32.610, 32.613, and 32.614–1 [Amended]

12. The FAR is amended by removing the reference "50 U.S.C. App. 1215(b)(2)" and inserting "Public Law 92–41" in its place in the following sections:

(a) Section 32.610, paragraph (b)(2);

(b) Section 32.613, paragraph (l); and

(c) Section 32.614–1, paragraph (c).

32.616 [Amended]

13. Section 32.616 is amended in the first sentence by removing the amount "$20,000" and inserting in its place "$100,000".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

14. Section 36.102 is amended by revising the definition of "Architect-Engineer Services" to read as follows:

36.102 Definitions.

Architect-engineer services, as defined in 40 U.S.C. 541, means:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

* * * * *

15. The table of contents under subpart 36.6 is amended to add the following entries following section 36.601:

Subpart 36.6—Architect-Engineer Services

Sec.

36.601 [Amended]

16a. Section 36.601 is amended by removing the text.

16b. Sections 36.601–1, 36.601–2, 36.601–3, and 36.601–4 are added to read as follows:

36.601–1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See Pub. L. 92–582, as amended; 40 U.S.C. 541–544.)

36.601–2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601–3 Applicable contracting procedures.

(a) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in parts 13, 14, and 15 of this regulation.

(b) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in parts 13, 14, or 15.

(c) Other than "incidental services" as specified in the definition of architect-engineer services in Section 36.102 and in Section 36.601–4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to parts 13, 14, and 15.

36.601–4 Implementation.

(a) Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing

reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services on an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to § 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to § 36.601. However, mapping services such as those typically performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

PART 39—ACQUISITION OF INFORMATION RESOURCES

17a. The "Note" appearing at the beginning of part 39 is removed.

17b. Section 39.002 is amended by designating the existing paragraph as (a); removing from the last sentence the reference "201–23" and inserting in its place "201–20"; and adding paragraph (b) to read as follows:

39.002 Delegations of procurement authority.

* * * * *

(b) The FIRMR part 201–39 is reprinted as FAR appendix A to part 39 as an aid to contracting officials operating under a delegation of procurement authority from GSA. Whenever a change is made to FIRMR part 39, that change will be reflected in FAR appendix A to part 39.

17c. A new appendix A is added to FAR part 39 to read as follows:

Editorial Note: Appendix A to part 39 is a reprint of FIRMR part 201–39 appearing in title 41 of the Code of Federal Regulations.

Appendix A to Part 39

Subchapter D—Acquisition of Federal Information Processing (FIP) Resources by Contracting

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201-39.000 Scope of part.

This part sets forth the unique rules that apply Government-wide to the acquisition of Federal information processing (FIP) resources by contracting.

§ 201-39.001 General.

(a) In addition to this part 201-39, contracting officers should review and be familiar with the policies and procedures contained in the complete FIRMR.

(b) To assist Federal agencies in preparing solicitations for FIP resources, the General Services Administration (GSA) makes available standard solicitations and other guidance. Federal agencies can obtain copies of these materials by contacting: General Services Administration, Regulations Branch (KMPR), 18th and F Streets, NW., Washington, DC 20405.

Subpart 201-39.1—Federal Information Resources Management Regulation (FIRMR) System

§ 201-39.100 Scope of subpart.

This subpart sets forth basic policies and general information pertaining to part 201-39 of the Federal Information Resources Management Regulation (FIRMR).

§ 201-39.101 Purpose, authority, applicability, and issuance.

§ 201-39.101-1 Purpose.

This part 201-39 sets forth FIRMR contracting policies and procedures in a single part organized for consistency with the Federal Acquisition Regulation (FAR). This part contains only those contracting policies and procedures that are unique to FIP resources.

§ 201-39.101-2 Authority.

This part 201-39 is prepared, issued, and maintained by the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended.

§ 201-39.101-3 Applicability.

(a) *Policies.* The FIRMR applies to—

(1) The acquisition, management, and use of FIP resources by Federal agencies.

(2) Any Federal agency solicitation or contract when either paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) applies:

(i) The solicitation or contract requires the delivery of FIP resources for use by a Federal agency or users designated by the agency.

(ii) The solicitation or contract explicitly requires the use by the contractor of FIP resources that are not incidental to the performance of the contract. FIP resources acquired by a contractor are incidental to the performance of a contract when: (A) None of the principal tasks of the contract depend directly on the use of the FIP resources; or

(B) The requirements of the contract do not have the effect of substantially restricting the contractor's discretion in the acquisition and management of FIP resources, whether the use of FIP resources is or is not specifically stated in the contract.

(iii) The solicitation or contract requires the performance of a service or the furnishing of a product that is performed or produced making significant use of FIP resources that are not incidental to the performance of the contract. Significant use of FIP resources means:

(A) The service or product of the contract could not reasonably be produced or performed without the use of FIP resources; and

(B) The dollar value of FIP resources expended by the contractor to perform the service or furnish the product is expected to exceed $500,000 or 20 percent of the estimated cost of the contract, whichever amount is lower.

(3) The creation, maintenance, and use of records by Federal agencies.

(b) *Exceptions.* (1) The FIRMR does not apply to the procurement of FIP resources—

(i) By the Central Intelligence Agency (CIA).

(ii) By the Department of Defense when the function, operation, or use of such resources—

(A) Involves intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(B) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(2) The FIRMR does not apply to radar, sonar, radio, or television equipment, except that the FIRMR is used by GSA to implement Federal Telecommunications Standards for radio equipment.

(3) When both FIP and other resources are being acquired under the same solicitation or contract and the FIRMR applies to the solicitation or contract, the FIRMR applies only to the FIP resources.

(4) While the FIRMR may require an agency to include in Federal solicitations and contracts provisions and clauses that control the contractor's acquisition of FIP resources, the FIRMR does not apply to FIP resources acquired by a Federal contractor that are incidental to the performance of a contract.

(5) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when:

(i) The embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product; or (ii) The dollar value of the embedded FIP equipment is less than $500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information."

(c) *Contract clause.* The contracting officer should consider inserting a clause in solicitations and contracts substantially the same as the clause at § 201-39.5202-1, FIRMR Applicability, when the agency determines that part 201-39 does not apply to an acquisition for FIP resources.

§ 201-39.101-4 [Reserved]

§ 201-39.101-5 Arrangement of part.

For consistency with the FAR, part 201-39 is divided into 53 subparts consisting of sections and subsections. In the same manner in which each FAR part deals with a separate aspect of acquisition, the corresponding subpart of part 201-39 deals with that aspect of acquisition as it relates to FIP resources. For example, since FAR part 6 deals with general competition requirements, FIRMR subpart 201-39.6 sets forth unique policies and procedures applicable to competition requirements for FIP resources. If there is no need to supplement a particular FAR part, the

corresponding subpart of part 201–39 is reserved.

§ 201–39.101–6 Copies.

(a) Copies of the complete FIRMR in looseleaf or annual bound versions may be purchased from: Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

(b) Contracting officers should contact the GPO, their agency liaison officer, or GSA (KMPR) for ordering information.

§ 201–39.102 Relationship of acquisition regulations.

(a) This part 201–39 sets forth Governmentwide policies and procedures unique to the acquisition of FIP resources by contracting. It relies on the FAR for general policies and procedures to be used in acquiring these resources. The policies and procedures of this part 201–39 are in addition to, not in lieu of, the FAR policies and procedures, except when the FIRMR specifically requires its policies and procedures, and not those of the FAR, to be followed.

(b) Notwithstanding the fact that the FAR is for the use of executive agencies in the acquisition of supplies and services, Federal agencies not otherwise subject to the FAR shall use the FAR in conjunction with the FIRMR when acquiring FIP resources.

§ 201–39.103 [Reserved]

§ 201–39.104 Deviations.

§ 201–39.104–1 Deviations from the FIRMR.

(a) *Policy.* Unless precluded by law, executive order, or regulation, GSA may grant deviations, as defined in subpart 201–39.2, from part 201–39 when necessary to meet the specific needs and requirements of each agency. Class deviations (affecting more than one contract action) and individual deviations (affecting only one contract action) may be authorized by—

(1) The Commissioner, Information Resources Management Service, or

(2) The officials designated by the Commissioner for that purpose.

(b) *Procedures.* (1) The agency head (or a designee) shall prescribe procedures for processing deviation requests.

(2) Each request for deviation shall explain the nature of and the reasons for the deviation.

(3) Agencies shall forward requests for deviations to: General Services Administration, Policy and Regulations Division (KMP), 18th & F Streets, NW., Washington, DC 20405.

§ 201–39.104–2 Deviations from the FAR.

Deviations from the FAR shall be accomplished in accordance with FAR subpart 1.4.

§ 201–39.105 [Reserved]

§ 201–39.106 Contracting authority and responsibilities.

§ 201–39.106–1 General.

(a) Notwithstanding FAR 1.601, authority and responsibility to contract for FIP resources is vested in the Administrator of General Services unless an exception in 40 U.S.C. 759(a)(3) applies. The Administrator of General Services, or a designee, authorizes agencies to contract for FIP resources by granting a delegation of procurement authority (DPA) to the agency designated senior official (DSO) when GSA determines that the DSO is sufficiently independent of program responsibility and has sufficient experience, resources, and ability to fairly and effectively carry out procurements under CSA's authority. Such delegations are granted by one of the following methods:

(1) The regulatory delegation of GSA's exclusive procurement authority which allows Federal agencies to contract for certain types of FIP resources up to specified dollar amounts without obtaining a specific DPA;

(2) A specific agency delegation of GSA's exclusive procurement authority whereby the GSA Commissioner for Information Resources Management or a designee may authorize changes in the regulatory DPA for individual Federal agencies (or components thereof) on the basis of their ability to acquire, manage, and use FIP resources in accordance with FIRMR policies and procedures; or

(3) A specific acquisition delegation of CSA's exclusive procurement authority provided to the agency as a result of the submission of an agency procurement request (APR) to CSA when acquisitions are not covered by either the regulatory or a specific agency DPA.

(b) The agency's DSO may redelegate GSA's exclusive authorities for FIP resources to qualified officials. However, such redelegation does not relieve the DSO of the responsibilities under 44 U.S.C. 3506 for the conduct of and accountability for acquisitions of FIP resources made under a DPA from GSA.

(c) Only a contracting officer may enter into and sign a contract on behalf of the Government. A DPA from GSA does not make the DSO a contracting officer. Contracting officers are appointed under procedures established by agency heads under FAR subpart 1.6.

(d) Additional policies and procedures related to delegations of procurement authority are addressed in part 201–20.

§ 201–39.106–2 Policy.

Before contracting for FIP resources, the contracting officer shall ensure that the agency's DSO has redelegated GSA's procurement authority to the contracting officer.

§ 201–39.106–3 Procedures.

The contracting officer shall consider this § 201–39.106, agency directives, and written instructions to the contracting officer issued under FAR 1.602–1 to ensure that the contracting officer is authorized to make the award.

§ 201–39.106–4 Contract clause.

(a) All solicitations and contracts for FIP resources subject to the FIRMR shall contain a clause identifying whether the contracting action is being conducted under the regulatory DPA, a specific agency DPA, or a specific acquisition DPA.

(b) If the contracting action is being conducted under a specific agency or specific acquisition DPA, the contract clause shall also include the GSA case number of the specific DPA.

(c) Accordingly, the contracting officer shall—

(1) Insert a clause substantially the same as the clause at § 201–39.5202–3, Procurement Authority, in each solicitation and contract for FIP resources; and

(2) Promptly issue an amendment to the solicitation modifying this clause if any of the facts set forth in it change prior to contract award.

Subpart 201–39.2—Definitions of Words and Terms

§ 201–39.200 Scope of subpart.

This subpart defines words and terms used in part 201–39.

§ 201–39.201 Definitions.

Designated senior official (DSO) means—

(a) The senior official designated by executive agencies pursuant to the Paperwork Reduction Act to be responsible for carrying out the agency's IRM functions (see 44 U.S.C. 3506); or

(b) The senior IRM official designated by the agency head for Federal agencies not subject to the Paperwork Reduction Act to be responsible for acquisitions of FIP resources made pursuant to a DPA.

Deviation means any one or a combination of the following:

(a) The issuance or use of a policy, procedure, practice, solicitation provision, contract clause, or method pertaining to the acquisition, management or use of Federal information processing resources that is inconsistent with the FIRMR.

(b) The omission or modification of any policy, procedure, practice, solicitation provision or contract clause required by the FIRMR.

(c) The authorization of lesser or greater limitations on the delegation, use, or application of any policy, procedure, solictation provision, or contract clause prescribed by the FIRMR, except that this does not preclude an agency from setting delegation thresholds at more restrictive levels than those established by the FIRMR.

Federal information processing (FIP) resources means automatic data processing equipment (ADPE) as defined in Public Law 99–500 (40 U.S.C. 759(a)(2)), and set out in paragraphs (a) and (b) of this definition.

(a) Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange,

transmission, or reception, of data or information—

(1) By a Federal agency, or

(2) Under a contract with a Federal agency which—

(i) Requires the use of such equipment, or

(ii) Requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment.

(b) Such term includes—

(1) Computers;

(2) Ancillary equipment;

(3) Software, firmware, and similar procedures;

(4) Services, including support services; and

(5) Related resources as defined by regulations issued by the Administrator for General Services.

(c) The term, FIP resources, includes FIP equipment, software, services, support services, maintenance, related supplies, and systems. These terms are limited by paragraphs (a) and (b) of the definition of FIP resources and are defined as follows:

(d) *FIP equipment* means any equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(e) *FIP maintenance* means those examination, testing, repair, or part replacement functions performed on FIP equipment or software.

(f) *FIP related supplies* means any consumable item designed specifically for use with FIP equipment, software, services, or support services.

(g) *FIP services* means any service, other than FIP support services, performed or furnished by using FIP equipment or software.

(h) *FIP software* means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment.

(i) *FIP support services* means any commercial nonpersonal services, including FIP maintenance, used in support of FIP equipment, software or services.

(j) *FIP system* means any organized combination of FIP equipment, software, services, support services, or related supplies.

Lowest overall cost means the least expenditure of funds over the system life, price and other factors considered, including, but not necessarily limited to—

(a) Prices for the FIP resources;

(b) The present value adjustment, if used; and

(c) The identifiable and quantifiable costs—

(1) Directly related to the acquisition and use of the FIP resources;

(2) Of conducting the contract action; and

(3) Of other administrative efforts directly related to the acquisition process.

Most advantageous alternative means the alternative that provides the greatest value to the Government over the system life in terms of price or cost, quality, performance, and any other relevant factors.

Outdated FIP equipment means any FIP equipment over eight years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production.

Radar equipment means any radio detection device that provides information on range, azimuth, or elevation of objects.

Radio equipment means any equipment or interconnected system or subsystem of equipment (both transmission and reception) that is used to communicate over a distance by modulating and radiating electromagnetic waves in space without artificial guide. This does not include such items as microwave, satellite, or cellular telephone equipment.

Sonar equipment means an apparatus that detects the presence and location of a submerged object by means of sonic, subsonic, or supersonic waves reflected back to it from the object.

Specific make and model specification means a description of the Government's requirement for FIP resources that is so restrictive that only a particular manufacturer's products will satisfy the Government's needs, regardless of the number of suppliers that may be able to furnish that manufacturer's products.

System life means a projection of the time period that begins with the installation of the FIP resource and ends when the agency's need for that resource has terminated.

Television equipment means any equipment (both transmission and reception) used for the conversion of transient visual images into electrical signals that can be transmitted by radio or wire to distant receivers where the signals can be reconverted to the original visual images. This does not include such items as monitors for computers or computer terminals or video conferencing equipment.

Subparts 201-39.3 and 201-39.4—[Reserved]

Subpart 201-30.5—Publicizing Contract Actions

§ 201-39.500 Scope of subpart.

This subpart prescribes the unique policies and procedures for publicizing contract actions when acquiring FIP resources using the GSA nonmandatory schedule contracts.

§ 201-39.501 Synopses of proposed contract actions.

§ 201-39.501-1 Policies.

(a) The contracting officer shall publicize the intent to place an order against a GSA nonmandatory contract by following the procedures of § 201-39.501-3 and FAR subpart 5.2.

(b) The contracting officer shall not use the exception to synopsizing set forth at FAR 5.202(a)(11) when using GSA nonmandatory schedule contracts to acquire FIP resources.

§ 201-39.501-2 Exceptions.

(a) The contracting officer need not publicize the intent to place an order against a GSA nonmandatory contract when—

(1) The total value of the order is $50,000 or less; or

(2) The order is for FIP resources that were previously specifically synopsized on a system life basis in a Commerce Business Daily (CBD) notice of intent in accordance with § 201-39.501-3 and FAR subpart 5.2.

(b) The contracting officer is not required to publish a second notice of a proposed contract action in accordance with FAR 5.203(a) when—

(1) A solicitation is being issued in accordance with § 201-39.603-3(b)(2)(iii); and

(2) The requirement was the subject of a previous CBD synopsis of intent accomplished in accordance with the procedures set forth in § 201-39.501-3 and FAR subpart 5.2.

§ 201-39.501-3 Procedures.

The contracting officer shall use the following procedures when publicizing the intent to place an order against a GSA nonmandatory schedule contract:

(a) Before placing an order for FIP resources against a GSA nonmandatory schedule contract, the contracting officer shall furnish a synopsis to the CBD in accordance with FAR 5.207 and this § 201-39.501.

(b) Notwithstanding FAR 5.203(c), the synopsis shall be published in the CBD at least 15 calendar days before placing the order. In calculating the 15 calendar days for synopsizing, the first day shall be the actual date the synopsis appears in the CBD.

(c) Format Item 17 (DESCRIPTION) of the standard synopsis format in FAR 5.207 shall contain a description of the intended contract action to the extent necessary to obtain information to permit the analysis required by § 201-39.803. As a minimum, Format Item 17 shall contain the following information:

(1) An identification of the specific nonmandatory schedule contract intended to be used.

(2) A description of the resources to be ordered, including, as applicable—

(i) The make and model of any FIP equipment to be ordered or maintained;

(ii) The name, functional description, and operating environment of any FIP software to be ordered;

(iii) The quantities, dates required, and period of performance;

(iv) The system life; and

(v) The type of support to be ordered.

(3) A request for pricing data.

(4) The following statement: "All responses from responsible sources will be fully considered. As a result of analyzing responses to this synopsis of intent, the contracting officer may determine that a solicitation will be issued. If a solicitation is issued, no additional synopsis will be published. Any such solicitation will be issued to the intended schedule vendor and all firms that respond to this synopsis of intent or otherwise request a copy of the soliciation."

Subpart 201-39.6—Competition Requirements

§ 201-39.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to—

(a) The acquisition of FIP resources using specific make and model specifications; and

(b) The use of follow-on contracts to perpetuate outdated FIP equipment.

§ 201-39.601 Specific make and model specifications.

§ 201-39.601-1 Policy.

An acquisition that uses a specific make and model specification does not provide for full and open competition and must be justified and approved in accordance with FAR 6.303 and 6.304.

§ 201-39.601-2 Exception.

Subsection 201-39.601-1 does not apply when an order for FIP resources is placed against a GSA nonmandatory schedule contract and—

(a) The statement of work or requirements documentation prepared by the technical and requirements personnel describes the requirements with other than a specific make and model specification, notwithstanding the fact that when the synopsis appears in the Commerce Business Daily (CBD) and the order is placed, a specific make and model is cited; and

(b) The procedures of § 201-39.803 regarding use of GSA nonmandatory schedule contracts are followed.

§ 201-39.601-3 Authority.

When the FIP resources required to meet the needs of an agency can be satisfied only through the use of a specific make and model specification, the statutory authority to be cited in FAR 6.303-2(a)(4), in lieu of any statutory authority cited in accordance with FAR 6.302, is: 40 U.S.C. 759(g), as amended.

§ 201-39.602 Outdated FIP equipment.

§ 201-39.602-1 Policy.

The justification requirements of FAR 6.302-1(a)(2)(ii) shall not be used to perpetuate any contract for outdated FIP equipment or for FIP equipment to be used with FIP software that requires general redesign to satisfy mission needs.

§ 201-39.602-2 Exception.

An exception to § 201-39.602-1 may be invoked if the agency's DSO determines that such action will be in the Government's best interest.

Subpart 201-39.7—[Reserved]

Subpart 201-39.8—Required Sources of Supplies and Services

§ 201-39.800 Scope of subpart.

This subpart prescribes the policies and procedures applicable to the acquistion of FIP resources using GSA mandatory and nonmandatory sources of supply.

§ 201-39.801 Ordering FIP resources from Federal Supply Schedules.

§ 201-39.801-1 General.

GSA directs and manages both the Federal Supply Schedules program and the GSA nonmandatory schedule contracts for FIP resources. While most FIP resources available under these programs are covered by the GSA nonmandatory schedule contracts for FIP resources, the Federal Supply Schedules also contain some resources that fall within the definition of FIP resources. Use of the Federal Supply Schedules program is covered by FAR 8.4 and use of the GSA nonmandatory schedule contracts for FIP resources is covered by this subpart 201-39.8.

§ 201-39.801-2 Policy.

The procedures of FAR 8.4 shall be followed when an order for FIP resources is placed against a GSA Federal Supply Schedule.

§ 201-39.802 Purchase of telephones and services (POTS) contracts.

§ 201-39.802-1 General.

(a) GSA has established POTS contracts to provide telecommunications supplies and services, including purchase, installation, maintenance, repair, deinstallation, and relocation of both contractor-provided and Government-owned telephone equipment, at locations throughout the country.

(b) Use of the POTS contracts is mandatory for supplies and services within the scope of the POTS contract at some locations (buildings or building complexes) where GSA operates or manages the telecommunications system or service.

(c) Federal agencies may obtain information and assistance concerning the use of POTS contracts from: General Services Administration, Technical Contract Management Division (KVT), 18th and F Streets, NW., Washington, DC 20405.

§ 201-39.802-2 Policies.

(a) Federal agencies at locations where a POTS contract is mandatory shall use the POTS contract to acquire supplies and services that are within the scope of the contract.

(b) Federal agencies at locations where POTS contracts are not mandatory may use POTS contracts to satisfy requirements when—

(1) The requirements are within the scope of the POTS contract; and

(2) The contracting officer determines that placing an order under the POTS contract is the most advanatageous alternative.

(c) Use of the POTS contracts is a competitive procedure when—

(1) It results in the most advanatageous alternative to meet the needs of the Government; and

(2) The procedures of this section are followed.

§ 201-39.802-3 Procedures.

(a) The contracting officer shall determine whether mandatory use of the POTS contracts applies by contacting GSA at the address shown in §201-39.802-1(c).

(b) The contracting officer's determination required by § 201-39.802-2(b) shall, as a minimum, be supported by an analysis of prices or an examination of the market. The GSA nonmandatory schedule contracts for FIP resources should be included in this analysis process.

(c) The requirements of subpart 201-39.5 and FAR part 5 do not apply when an order is issued under a POTS contract and the procedures of this section are followed.

§ 201-39.803 GSA nonmandatory schedule contracts for FIP resources.

§ 201-39.803-1 General.

(a) GSA nonmandatory schedule contracts for FIP resources, managed by GSA's Information Resources Management Service provide Federal agencies with a simplified process for obtaining these resources. GSA awards such contracts to many different vendors and each contract establishes terms, conditions, and prices for stated periods of time. These contracts are not part of the Federal Supply Service (FSS) Schedule program covered in FAR support 8.4 and they are not mandatory sources of supply.

(b) Agencies should use GSA nonmandatory schedule contracts for FIP resources when the contracting officer determines that placing an order under a GSA nonmandatory schedule contract would result in a lower overall cost than other contracting methods, such as issuing a solicitation, using small purchase procedures, using a nonmandatory agency contract, or using other nonmandatory GSA programs.

§ 201-39.803-2 Policy.

Use of GSA nonmandatory schedule contracts is a competitive procedure when—

(a) It results in the lowest overall cost alternative to meet the needs of the Government; and

(b) The procedures of this section are followed.

§ 201-39.803-3 Procedures.

(a) Prior to selecting a GSA nonmandatory schedule contract and placing an order or, if applicable, publishing a synopsis of intent to place an order, the agency shall—

(1) Justify any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment); and

(2) Consider the offerings of a reasonable number of nonmandatory schedule contractors.

(b) The contracting officer shall consider all responses received as a result of the CBD notice and then determine whether to order from a GSA nonmandatory schedule contract or issue a solicitation. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, document the contract file with the results of the CBD synopsis and an analysis indicating that an order placed against the synopsized nonmandatory schedule contract provides the lowest overall cost alternative to meet the Government's needs.

(2) When a response to the CBD notice is received from either a responsible vendor that does not have a GSA nonmandatory schedule contract or a GSA nonmandatory schedule contractor (expressing an interest either on or off schedule) for items that may meet the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the contract file with an analysis indicating that the respondent's items would not meet the requirements o. that the synopsized GSA nonmandatory schedule contract items provides the lowest overall cost alternative to meet the

Government's needs and place an order against the synopsized CSA nonmandatory schedule contract;

(ii) Document the contract file with an analysis indicating that a responding contractor's GSA nonmandatory schedule contract offering provides the lowest overall cost alternative to meet the Government's needs and place an order against that GSA nonmandatory schedule contract; or

(iii) Document the contract file with an analysis indicating that ordering from a GSA nonmandatory schedule contract may not result in the lowest overall cost alternative to meet the Government's needs. In this case, the contracting officer may elect to issue a solicitation. In such cases, the contracting officer shall take the following actions:

(A) Ensure that the solicitation contains terms and conditions substantially the same as those of the GSA solicitation for nonmandatory schedule contracts that resulted in the synopsized schedule contract; and

(B) Provide the solicitation to those potential offerors responding to the CBD synopsis of intent; the vendor whose GSA nonmandatory schedule contract was the subject of the synopsis; and any other potential offerors that specifically express an interest.

(c) If the contracting officer places an order in accordance with § 201–39.803–3(b)(2)(i) or (b)(2)(ii), the contracting officer shall promptly provide written notification of award to the synopsized schedule vendor and to all parties responding in writing to the CBD notice.

(d) Requirements or orders shall not be fragmented in order to circumvent the applicable MOL.

§ 201–39.804 Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program.

§ 201–39.804–1 General.

(a) The Office of Management and Budget (OMB) has established a Governmentwide financial management systems software program. To help agencies implement this program, GSA has established the mandatory FMSS MAS contracts program.

(b) Federal agencies may obtain information and assistance concerning the use of the FMSS MAS contracts program from: General Services Administration, ADP Systems Procurement Branch (KECP), FMSS Contracting Officer, 18th and F Streets, NW., Washington, DC 20405.

(c) OMB Circular No. A–127, "Financial Management Systems," provides further policy direction regarding the FMSS program.

§ 201–39.804–2 Policy.

Executive agencies shall use the FMSS MAS contracts program for the acquisition of commercial software for primary accounting systems and for the acquisition of services and support related to the implementation of such software.

§ 201–39.804–3 Exceptions.

(a) If an executive agency holds a licensing agreement for a software package that is available on the FMSS MAS contracts, and the package was obtained under a contract awarded before the award of the FMSS MAS contracts, the agency's use of the FMSS MAS contracts program is optional for the acquisition of services and support related to the implementation of that package until the previous non-MAS contract expires.

(b) Use of the FMSS MAS contracts program by Federal agencies that are not executive agencies is optional and is subject to the FMSS contractor accepting the order.

(c) An executive agency shall obtain a waiver from GSA if it determines that its requirements for financial management systems software cannot be satisfied through use of the FMSS MAS contracts program.

(1) The request for a waiver shall contain the following information:

(i) A description of the agency's requirements;

(ii) The reasons the FMSS MAS contracts program does not satisfy the requirements; and

(iii) A description of how the agency proposes to satisfy its needs for financial management system software.

(2) Agencies shall send waiver requests to GSA at the address in § 201–39.804–1(b).

(3) If a waiver is obtained from GSA, a deviation from the FIRMR is not required.

§ 201–39.804–4 Procedures.

(a) The contracting officer shall announce the agency's requirements in a letter of interest (LOI) to all contractors participating in the FMSS MAS contracts program.

(b) At the time of issuance, the contracting officer shall provide a copy of the LOI to GSA at the address in § 201–39.804–1(b) and to OMB at the following address: Office of Management and Budget, Chief Financial Officer, 725 17th Street, NW., room 10235, Washington, DC 20503.

(c) The LOI shall—

(1) Contain sufficient information to enable a competitive acquisition under the FMSS MAS contracts program;

(2) Include instructions to the FMSS MAS contractors for responding to the LOI; and

(3) Include evaluation and award factors.

(d) The agency shall conduct an analysis of the offerings of the FMSS MAS contractors and issue a delivery order to the contractor that provides the most advantageous alternative to the Government.

(e) The contracting officer may issue single or multiple delivery orders to satisfy the total requirement.

(f) The contracting officer shall provide a copy of each delivery order, or modification thereto, to OMB at the address shown in subparagraph (b) of this section and to GSA at the address in § 201–39.804–1(b).

Subpart 201–39.9—[Reserved]

Subpart 201–39.10—Specifications, Standards, and other Purchase Descriptions

§ 201–39.1000 Scope of subpart.

This subpart prescribes policies and procedures for using specifications, standards, and other purchase descriptions in acquiring FIP resources.

§ 201–39.1001 Security and privacy specifications.

§ 201–39.1001–1 Security specifications.

Specifications for security of FIP resources shall include, as appropriate:

(a) Agency rules of conduct that a contractor shall be required to follow.

(b) A list of anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must speficially provide.

(d) The security standards applicable to the contract.

(e) A description of the test methods, procedures, criteria, and inspection system necessary to verify and monitor the operation of the safeguards during contract performance and to discover and counter any new threats or hazards.

(f) A description of the procedures for periodically assessing the security risks involved.

(g) A description of the personnel security requirements.

(h) Consistent with the guidelines for Federal computer security training issued by the National Institute of Standards and Technology (NIST) and regulations issued by the Office of Personnel Management (OPM), a description of the security training that the contractor is required to provide to its employees.

(i) Consistent with the guidelines issued by the Office of Management and Budget (OMB) in OMB Bulletin 88–16, a description of the plan the contractor must develop or follow to provide for the security and privacy of FIP resources the contractor is required to operate.

§ 201–39.1001–2 Privacy specifications.

(a) *Applicability.* This subsection is applicable to executive agencies that are subject to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Procedures.* Specifications for the design, development, or operation of a system of records using commercial FIP services or support services shall include the following:

(1) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(2) A list of the anticipated threats and hazards that the contractor must guard against.

(3) A description of the safeguards that the contractor must specifically provide.

(4) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

§ 201–39.1001–3 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at § 201–39.5205–5, Privacy or Security Safeguards, in solicitations and contracts—

(a) Requiring security of FIP resources.

(b) For the design, development, or operation of a system of records using commercial FIP services or support services.

§ 201-39.1002 Federal standards.

§ 201-39.1002-1 General.

GSA publishes a handbook titled "Federal ADP and Telecommunications Standards Index" providing guidance to agencies on the use of Federal standards. The index also provides optional terminology that may be used to incorporate standards in solicitations and a "Standards Checklist" that can be included in the solicitation to incorporate applicable Federal standards. Copies of the index can be purchased from: U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

§ 201-39.1002-2 Policy.

The contracting officer shall include in solicitations terminology to incorporate each standard that is applicable to the FIP resources being acquired.

§ 201-39.1002-3 Procedures.

The contracting officer shall use one or a combination of the following methods to implement standards in solicitations:

(a) Include inthe solicitation the full text of the terminology contained in the index for each applicable standard.

(b) Incorporate in the solicitation the applicable terminology by reference to the index.

(c) For each applicable standard, include the full text of the terminology as developed by the agency.

§ 201-39.1002-4 Solicitation provision.

If any of the terminology to incorporate standards in solicitations is incorporated by reference, the contracting officer shall insert in the solicitation the provision at § 201-39.5202-2, Availability of the "Federal ADP and Telecommunications Standards Index."

§ 201-39.1003 Specifications for outdated FIP equipment.

The contracting officer shall not include specifications for outdated FIP equipment in a solicitation unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602.

Subparts 201-39.11 and 201-39.12 — [Reserved]

Subpart 201-39.13—Small Purchase and Other Simplified Purchase Procedures

§ 201-39.1300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring from commercial sources FIP resources whose aggregate amount does not exceed the small purchase threshold of FAR part 13.

§ 201-39.1301 Policy.

When requirements for FIP resources are to be satisfied through the use of GSA sources of supply as set forth in subpart 201-39.6, the policies and procedures of FAR part 13 do not apply.

Subpart 201-39.14—Sealed Bidding

§ 201-39.1400 Scope of subpart.

This subpart prescribes policies and procedures governing contracting for FIP resources by sealed bidding.

§ 201-39.1401 General.

This subpart requires the contracting officer to select the bid that is most advantageous to the Government considering options, acquisition methods, present value discount factors, and other price-related factors. Therefore, contracting officers should consider the factors associated with each acquisition of FIP resources in order to select the method of contracting that will best accommodate this requirement.

§ 201-39.1402 Price-related factors.

§ 201-39.1402-1 Policies.

(a) In addition to the bid price for the basic and all optional quantities and contract periods and optional FIP resources; and the price-related factors set forth in FAR 14.201-8, sealed bid solicitations for FIP resources shall be structured to require consideration of the following factors, as applicable, in order to determine which bid is most advantageous to the Government.

(1) Support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(2) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When the timing of payments is expected to vary among the alternatives being considered, all prices and costs shall be adjusted to present value, and the results shall be applied in determining the bid most advantageous to the Government. Agencies should follow the guidance in OMB Circular A-104 regarding present value calculations.

§ 201-39.1402-2 Exception.

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method to be used is purchase;

(b) The purchase price of each item being acquired does not exceed $25,000; and

(c) The total purchase price of all the FIP resources to be included in the contract does not exceed $300,000.

§ 201-39.1403 Solicitation.

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

§ 201-39.1404 Award.

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602 or § 201-39.1003.

Subpart 201-39.15—Contracting By Negotiation

§ 201-39.1500 Scope of subpart.

This subpart prescribes policies and procedures governing contracting for FIP resources by negotiation.

§ 201.39-1501 Evaluation factors.

§ 201-39.1501-1 Policies.

(a) In addition to the factors set forth in FAR 15.605, the contracting officer shall evaluate total cost, including the following factors:

(1) All prices for FIP resources including the basic and optional quantities, basic and optional contract periods, and optional FIP resources.

(2) Other support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(3) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When the timing of payments is expected to vary among the alternatives being considered, agencies shall adjust all prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A-104 regarding present value calculations.

§ 201-39.1501-2 Exception.

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method being solicited is purchase;

(b) The purchase price of each item being acquired does not exceed $25,000; and

(c) The total purchase price of all of the FIP resources to be included in the contract does not exceed $300,000.

§ 201-39.1502 Solicitation.

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

§ 201-39.1503 Award.

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602 or § 201-39.1003.

Subpart 201-39.16—[Reserved]

Subpart 201-39.17—Special Contracting Methods

§ 201-39.1700 Scope of subpart.

This subpart prescribes policies asnd procedures for using options in acquiring FIP resources.

§ 201-39.1701 Options.

§ 201-39.1701-1 General.

The use of options may be appropriate in FIP resources acquisitions because—

(a) The FIRMR requires agencies to determine a system life for each FIP resource requirement and to evaluate costs over the system life;

(b) Funding is normally not available at the time of award for the entire system life; and

(c) Soliciting and evaluating optional quantities, optional contract periods, and optional FIP resources can be an effective method to achieve competition for the options and to prevent the possibility of a contractor "buying-in."

§ 201-39.1701-2 Applicability.

Except as set forth below, the policies and procedures of FAR subpart 17.2 shall apply to the acquisition of FIP resources, notwithstanding the language in FAR 17.200.

§ 201-39.1701-3 Policy.

Notwithstanding the language in FAR 17.202, a contract for FIP resources with options to extend the contract period of performance, or to acquire additional quantities or optional FIP resources may be used when—

(a) The Government has requirements for the acquistiion of FIP resources extending beyond the basic contract period;

(b) Funds are not available for the entire system life, but a reasonable certainty exists that they will be available in the future; or

(c) Competition for the additional periods, quantities or optional FIP resources is impracticable once the contract is awarded.

§ 201-39.1701-4 Contracts.

Notwithstanding the language in FAR 17.204(e), the total of the basic and option periods for contracts not subject to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), as amended, may exceed 5 years (see FAR 22.10). However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

§ 201-39.1701-5 Documentation.

Any justifications and approvals or determinations and findings required by subpart 201-39.6 or FAR part 6 shall specify both the basic requirement and all options.

§ 201-39.1701-6 Evaluation.

Notwithstanding the language in FAR 17.206, the contracting officer shall consider all options in the award evaluation.

§ 201-39.1701-7 [Reserved]

§ 201-39.1701-8 Solicitation provision and contract clauses.

In lieu of the solicitation provisions and contract clauses prescriptions set forth in FAR 17.208, the contracting officer shall insert the following in solicitations and contracts for FIP resources that contain options—

(a) A provision substantially the same as the provision at § 201-39.5204-4, Evaluation of Options-FIP Resources, in the solicitation;

(b) A clause substantially the same as the clause at FAR 52.217-6, Option for Increased Quantity, in the solicitation and contract; and

(c) A clause substantially the same as the clause at FAR 52.217-9, Option to Extend the Term of the Contract, in the solicitation and contract.

Subparts 201-39.18 through 201-39.32—[Reserved]

Subpart 201-39.33—Protests, Disputes, and Appeals

§ 201-39.3300 Scope of subpart.

This subpart prescribes policies and procedures applicable to protests concerning FIP resource acquisitions filed with the GSA Board of Contract Appeals (GSBCA).

§ 201-39.3301 General.

Under Public Law 98-369, as amended (40 U.S.C. 759(f)), the GSBCA is authorized to hear and decide protests by interested parties involving acquisitions of FIP resources by Federal agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), including acquisitions subject to GSA delegations of procurement authority.

§ 201-39.3302 Applicability.

This subpart is applicable to all Federal agencies.

§ 201-39.3303 Policy.

All Federal agencies shall follow the GSBCA "Rules of Procedure" in 48 CFR chapter 61.

§ 201-39.3304 Procedures.

§ 201-39.3304-1 Protest notice.

Within 1 working day after receiving a copy of the protest, the contracting officer shall give oral or written notice of the protest to: General Services Administration, Acquisition Evaluation and Analysis Branch (KMAD), 18th and F Streets NW., Washington, DC 20405, telephone (202) 501-4305 or FTS 241-4305.

§ 201-39.3304-2 GSA participation.

In delegating procurement authority for FIP resources to Federal agencies, GSA has the right to intervention in any protest case involving any Federal agency.

Subparts 201-39.34 through 201-39.43—[Reserved]

Subpart 201-39.44—Subcontracting Policies and Procedures

§ 201-39.4400 Scope of subpart.

This subpart prescribes policies and procedures applicable when subcontracting includes FIP resources.

§ 201-39.4401 Policy.

In addition to the policies and procedures set forth in FAR 44.202-2, the contracting officer responsible for consent shall make a written determination for the file that competition was obtained for FIP resources or that the absence of competition is properly justified.

Subpart 201-39.45—Government Property

§ 201-39.4500 Scope of subpart.

This subpart prescribes policies and procedures for providing Government FIP resources to contractors.

§ 201-39.4501 Dedicated FIP equipment or software in FIP services contracts.

§ 201-39.4501-1 General.

When an offeror proposes the dedicated use of FIP equipment or software in performing a FIP service, it means that the offeror is proposing to use that resource exclusively in providing that service. When this is the case, it can sometimes be more advantageous to the Government to provide the FIP equipment or software to the offeror as Government-furnished property.

§ 201-39.4501-2 Policy.

When a solicitation requires or allows an offeror to propose the dedicated use of FIP equipment or software in performing a FIP service, the contracting officer shall ensure that the solicitation—

(a) Reserves the right for the Government to furnish the dedicated items to the offeror;

(b) Requires the offeror to price the use of the dedicated items on a specific line-item basis; and

(c) Requires the offeror to specify the interface requirements between the offeror's system and the dedicated items.

Subpart 201-39.46—Quality Assurance

§ 201-39.4600 Scope of subpart.

This subpart prescribes the use of a contract clause for limiting contractor liability for loss of or damage to property of the Government.

§ 201-39.4601 Contract clause.

The contracting officer shall insert the clause at § 201-39.5202-6, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for FIP resources, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

Subparts 201-39.47 through 201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

§ 201-39.5200 Scope of subpart.

This subpart—

(a) Gives instructions for using provisions and clauses in solicitations and contracts for FIP resources; and

(b) Sets forth the solicitation provisions and contract clauses prescribed by this part 201-39.

§ 201-39.5201 [Reserved]

§ 201-39.5202 Texts of provisions and clauses.

§ 201-39.5202-1 FIRMR Applicability.

As prescribed in § 201-39.101-3(c), insert a clause substantially the same as the following in solicitations and contracts:

FIRMR Applicability (Oct 90 FIRMR)

This solicitation/contract requires the use or delivery of Federal information processing resources but the agency has determined that FIRMR part 201-39 does not apply based on the exception set forth in § 201-39.101-3(b)*

(End of clause)

*Insert the specific sub-paragraph number(s) of the applicable exception.

§ 201-39.5202-2 Availability of the "Federal ADP and Telecommunications Standards Index."

As prescribed in § 201-39.1002-4, insert the following provision in the solicitation:

Availability of the "Federal ADP and Telecommunications Standards Index" (Oct 90 FIRMR)

Copies of the "Federal ADP and Telecommunications Standards Index" can be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

(End of provision)

§ 201-39.5202-3 Procurement authority.

As prescribed in § 201-39.106-4, insert a clause substantially the same as the following in solicitations and contracts:

Procurement Authority (Oct 90 FIRMR)

This acquisition is being conducted under *delegation of GSA's exclusive procurement authority for FIP resources.

The specific GSA DPA case number is**

(End of provision)

*Insert one of the following phrases:

(1) "the regulatory;"

(2) "a specific agency;"

(3) "a specific acquisition."

**Insert one of the following:

(1) If the acquisition is being conducted under the regulatory delegation, insert "not applicable."

(2) If the acquisition is being conducted under a specific agency delegation or a specific acquisition delegation, insert the case number as provided in GSA's letter delegating the specific procurement authority (e.g., KMA-88-9999).

§ 201-39.5202-4 Evaluation of options—FIP resources.

As prescribed in § 201-39.1701-8(a), insert a provision substantially the same as the following in the solicitation:

Evaluation of Options—FIP Resources (Oct 90 FIRMR)

(a) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. These prices will be adjusted by the applicable discount factors shown in* of the solicitation. Evaluation of options will not obligate the Government to exercise the options. Offers containing any changes for failure to exercise any option will be rejected.

(b) Selection of an offer will be made on the basis of the most advantageous alternative to the Government provided that the contract prices reasonably represent the value of bona fide requirements for each fiscal year. This determination with respect to contract prices will be made after consideration of such factors as commercial or catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet the criteria, that offer cannot be accepted for award.

(End of provision)

*Insert one of the following:

(1) If a present-value adjustment is being used, indicate the location in the solicitation where any applicable discount factors and contemplated payment schedule are specified; or

(2) If a present-value adjustment is not being used, insert "Not Applicable."

§ 201-39.5202-5 Privacy or security safeguards.

As prescribed in § 201-39.1001-3, insert a clause substantially the same as the following clause in solicitations and contracts:

Privacy or Security Safeguards (Oct 90 FIRMR)

(a) The details of any safeguards the contractor may design or develop under this contract are the property of the Government and shall not be published or disclosed in any manner without the contracting officer's express written consent.

(b) The details of any safeguards that may be revealed to the contractor by the Government in the course of performance under this contract shall not be published or disclosed in any manner without the contracting officer's express written consent.

(c) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(d) If new or unanticipated threats or hazards are discovered by either the Government or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

§ 201-39.5202-6 Warranty exclusion and limitation of damages.

As prescribed in § 201-39.4601, insert the following clause in solicitations and contracts.

Warranty Exclusion and Limitation of Damages (Oct 90 FIRMR)

Except as expressly set forth in writing in this agreement and except for the implied warranty of merchantability, there are no warranties expressed or implied.

In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of January 1, 1973, i.e.—

Consequential damages resulting from the seller's breach include—

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

Subpart 201-39.53—[Reserved]

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203-8 [Amended]

18. Section 52.203-8 is amended following paragraph (b)(4) of the clause by inserting blank lines for the signature and name requested by the bracketed text.

52.203-9 [Amended]

19. Section 52.203-9 is amended following paragraph (c)(3) of the clause

by inserting blank lines for the signature and name requested by the bracketed text.

20. Section 52.209–6 is revised to read as follows:

52.209–6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409(b), insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 1991)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of Clause)

21. Section 52.215–39 is added to read as follows:

52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).

As prescribed in 15.804–8(f), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) (JUL 1991)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(o)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(f). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205–6(o).

(End of clause)

22. Section 52.216–7 is amended by revising the date in the heading of the clause and the first sentence in paragraph (b)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (JUL 1991)

(b) * * *

(2) Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes: *Provided*, That the Contractor pays the contribution to the fund within 30 days after the close of the period covered. * * *

* * * * *

52.219–19 [Amended]

23. Section 52.219–19 is amended in the clause title by removing the words "(JAN 1991)" and inserting in their place "(JUL 1991)"; in paragraph (b) by removing the word "clause" and inserting in its place "provision".

52.219–21 [Amended]

24. Section 52.219–21 is amended in the clause title by removing the words "(JAN 1991)" and inserting in their place "(JUL 1991)"; in the parenthetical of the first paragraph by removing the word "clause" and inserting in its place "provision"; and in the table, in the second column, in the third entry, in the clause removing the amount "$2,000,002" and inserting in its place "$2,000,001".

52.220–1 [Amended]

25. Section 52.220–1 is amended in the first line of the paragraph by removing the word "clause" and inserting in its place "provision"; at the end of the clause by removing the words "(End of clause)" and inserting in their place "(End of provision)"; and removing the derivation line following "(End of provision)".

52.220–3 [Amended]

26. Section 52.220–3 is amended in the introductory paragraph by inserting a colon after the word "clause" and removing the remainder of the sentence.

27. Section 52.232–16 is amended by removing from the clause heading the date "(AUG 1987)" and inserting in its place "(JUL 1991)" and revising the introductory text of paragraph (a)(2)(iii) of the clause to read as follows:

52.232–16 Progress Payments.

* * * * *

PROGRESS PAYMENTS (JUL 1991)

* * * * *

(a) * * *

(2) * * *

(iii) Accrued costs of Contractor contributions under employee pension or other postretirement benefit, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

* * * * *

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Tuesday
June 25, 1991

Part XI

Environmental Protection Agency

40 CFR Parts 795, 798, and 799
Brominated Flame Retardants (Group I); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795, 798 and 799

[OPTS-42115, FRL 3795-7]

RIN NO. 2070-AB07

Brominated Flame Retardants (Group I); Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is issuing a proposed test rule under section 4(a) of the Toxic Substances Control Act (TSCA) in response to the Interagency Testing Committee (ITC) designation of the following five brominated flame retardants (BFRs) for health and environmental effects and chemical fate testing: (1) pentabromodiphenyl ether (PBDPE; CAS. No. 32534-81-9), (2) octabromodiphenyl ether (OBDPE; CAS. No. 32536-52-0), (3) decabromodiphenyl ether (DBDPE; CAS No. 1163-19-5), (4) 1,2,bis(2,4,6-tribromophenoxy)ethane (BTBPE; CAS. No. 37853-59-1), and (5) hexabromocyclododecane (HBCD; CAS. No. 3194-55-6). EPA has concluded that: activities involving these BFRs may pose an unreasonable risk of injury to human health or the environment as suggested by certain preliminary data; existing data are inadequate to assess the risks to human health and the environment posed by exposure to these substances, and testing of each of the five BFRs is necessary to develop such data.

DATES: Submit written comments on or before August 26, 1991. If persons request an opportunity to submit oral comment by August 9, 1991, EPA will hold a public meeting on this proposed 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-42115), in triplicate to: TSCA Public Reading Room (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, rm. NE-G004, 401 M St., SW., Washington, DC, 20460.

A public version of the administrative record supporting this action, without confidential business information is available for inspection at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, 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: This document proposes a test rule to require certain health, environmental, and chemical fate tests for the following five brominated flame retardants:

chemical substance	CAS No.	Docket No.
pentabromodiphenyl ether (PBDPE)	32534-81-9	42115/42145
octabromodiphenyl ether (OBDPE)	32536-52-0	42115/42146
decabromodiphenyl ether (DBDPE)	1163-19-5	42115/42147
1,2,bis(2,4,6-tribromophenoxy)ethane (BTBPE)	37853-59-1	42115/42148
hexabromocyclododecane (HBCD)	3194-55-6	42115/42149

The proposed health effects testing consists of tiered mutagenicity testing (all), subchronic toxicity testing (HBCD), neurotoxicity testing (all), reproductive effects testing (all), developmental toxicity testing (all), chronic toxicity testing (PBDPE, OBDPE and BTBPE), and oncogenicity testing (PBDPE, OBDPE, BTBPE, and HBCD).

The proposed environmental effects testing consists of the algal assay (all), fish early life stage toxicity testing (all), aquatic invertebrate chronic toxicity testing (all), benthic organism toxicity testing (all), mallard reproduction testing (all), laboratory earthworm testing (all), terrestrial plant testing (all), immunotoxicity testing (all), and bioconcentration testing (all).

The proposed chemical fate testing consists of testing to determine vapor pressure (all), water solubility (all), log octanol/water partition coefficient (PBDPE, OBDPE, and DBDPE), direct and indirect photolysis (all), biodegradation testing in water/sediment (all), sediment and soil adsorption (all), and anaerobic biodegradation (all). Testing is conditional for all environmental testing and the biodegradation testing in water/sediment for two BFRs (OBDPE and DBDPE) based on results from PBDPE.

I. Introduction

A. ITC Recommendation

The ITC designated the chemical category "brominated flame retardants" for chemical fate, health and environmental effects testing. The reasons for this designation are discussed in the **Federal Register** of December 12, 1989 (54 FR 51114).

B. Test Rule Development Under TSCA

EPA has evaluated the ITC's testing recommendations for the BFRs, relying heavily on the Information Review (Ref. 1) developed by the ITC, as well as the supplemental information developed by EPA. On the basis of this evaluation, EPA is proposing chemical fate, health effects and environmental effects testing for the BFRs under TSCA section 4(a)(1)(A). A discussion of the TSCA section 4 findings was provided in the **Federal Register** of July 18, 1980 (45 FR 48524). EPA is not now making findings under section 4(a)(1)(B) because EPA is developing its response to the court that remanded a test rule promulgated under TSCA section 4(a)(1)(B) for cumene (In *Chemical Manufacturers Association et al. v. Environmental Protection Agency* (899 F.2d 344 (5th Cir. 1990)). EPA

reserves the right to make findings for BFRs under TSCA section 4(a)(1)(B) in the future.

This action constitutes EPA's response to the ITC as required by TSCA section 4.

II. Review of Available Data

A. Profile

The ITC (Ref. 1) designated five BFRs for priority testing. Three, PBDPE, OBDPE, and DBDPE, are structurally similar and are placed in a single category for some testing purposes. BTBPE and HBCD, while sharing similar uses with the three diphenyl ethers, are structurally dissimilar to them and to each other, and therefore are considered individually with respect to testing. All of these BFRs are solids at room temperature and have relatively low water solubility (Ref. 1).

B. Production and Use

Specific production volumes of each BFR have been claimed as confidential business information (CBI).

The BFRs are used mainly as additives to various plastic resins to impart resistance to burning. BFRs are primarily used in polystyrene, ABS resins, and epoxies. HBCD is used in polystyrene foam, and BTBPE in ABS resins and unsaturated polyester (Ref. 2).

C. Exposure and Release

Environmental releases and exposures of humans are anticipated from manufacturing and processing and from packaging and cleaning operations associated with the production and use of these BFRs (Ref. 1). EPA estimates that 160 to 2,200 workers may be exposed to the 3 diphenyl ethers through the inhalation and dermal routes (Ref. 10). No estimates were available for BTBPE or HBCD. PBDPE, DBDPE, and BTBPE were detected in air and soil near two U.S. production facilities and PBDPE has also been detected in fish, marine mammals, and birds in Sweden and in mussels and river sediment in Japan (Ref. 1). These detections are relevant to general population and environmental exposures. DBDPE was also found in shellfish and sediments in Japan (Ref. 1). BFRs, including PBDPE, have recently been detected in Atlantic bottle-nosed dolphins on the U.S. East Coast (Refs. 1 and 3). Although EPA is not aware of any reports that OBDPE and HBCD have been detected in the environment, they have uses similar to the other three BFRs and can reasonably be anticipated to be similarly released to the environment.

In an analysis of human adipose tissue from the fiscal year (FY) 1987 National Human Adipose Tissue Survey specimen repository, nearly all of the adipose tissue extracts analyzed contained hexa- through octabrominated diphenyl ethers (Ref. 4). The analytic methodology did not permit brominated diphenyl ethers with fewer than six bromines to be detected. Exact tissue levels were also difficult to measure, but approximate levels, from 5 to 8,000 picograms/gram (pg/g), were measurable from the composite samples. The National Human Adipose Tissue Survey Specimen repository represents a more or less random sampling of the general population. These data indicate exposure to the BFRs is widespread, and may also indicate that these substances have potential to bioaccumulate (i.e., the uptake and subsequent accumulation of a substance in an organism's tissues either through direct (e.g., respiration) or indirect (e.g., food consumption) means) in the human population.

D. Health Effects

1. *Metabolism and pharmacokinetics.* In a metabolism study in male rats with radiolabelled DBDPE, administered at 250 to 50,000 ppm in the diet, the majority of the compound was, after 9 to 11 days, excreted in the feces (82 to 100 percent) with a small amount (< 0.012 percent) excreted in the urine (Ref. 1). Most of the compound was excreted unchanged, with small amounts of three unidentified metabolites also detected. When administered as a single dose by gavage, similar results were obtained.

BTBPE also appears to be poorly absorbed through the gut. When radioactive BTBPE was administered to rats, 80 percent was recovered in the feces, and 5 percent was recovered in the urine within 4 days of dosing (Ref. 1).

2. *Acute and subchronic effects.* All of these BFRs are of low acute toxicity. The oral LD50 in rats for PBDPE was 7,400 mg/kg males and 5,800 mg/kg for females. LD50 values were not determined for OBDPE or DBDPE, but would exceed the 5,000 mg/kg administered (Ref. 1). Similarly, 10,000 mg/kg administered as an acute oral dose was insufficient to provide an LD50 value for BTBPE and HBCD (Ref. 1).

Subchronic studies have yielded a lowest observed adverse effect level (LOAEL) of 10 mg/kg/day for OBDPE (90–day dietary study), and liver effects were also seen at all doses tested (100, 1,000, and 10,000 ppm) in a 90–day oral gavage study for OBDPE. Similarly, in a 14–day study (inhalation of OBDPE as a dust) hepatocellular enlargements and necrosis were observed at all doses tested, 12, 120, and 1,200 mg/m^3 (Refs. 1 and 5). A no observable adverse effect level (NOAEL) of 8 mg/kg/day was obtained for DBDPE in a 30–day dietary study (Ref. 1). PBDPE, tested in a 90–day dietary study in rats with a subsequent 24–week follow-up period, caused irreversible liver hyperplasia at 2 and 100 mg/kg/day; a NOAEL was not established. Reversible thyroid hyperplasia was also observed (Refs. 1 and 5). In another 90–day study in rats a LOAEL of 10 percent of the diet (about 5,000 mg/kg/day) and a NOAEL of 1 percent in the diet were established for BTBPE (Refs. 1 and 5).

Liver effects, including enlarged liver cells and/or hepatocellular lesions were common to all of these chemicals (Refs. 1 and 5). Furthermore, the diphenyl ether compounds all showed thyroid hyperplasia (Refs. 1 and 5). In the acute studies with PBDPE, tremors and reduced activity immediately after exposure were also observed (Ref. 1).

3. *Chronic effects.* Chronic data were developed for DBDPE in two separate studies. In a 2–year feeding study done by the National Toxicology Program (NTP), the NOAEL was >2,240 mg/kg/day in rats, the highest dose tested. In mice, there was a doserelated thyroid hyperplasia observed at the 3,200 and 6,400 mg/kg/day dose (Refs. 1 and 6). A 2–year feeding study in rats conducted by Kociba et al. (1975) at much lower doses saw no effect at 1 mg/kg/day, the highest dose tested (Refs. 1 and 7).

4. *Oncogenicity.* Only DBDPE has been examined for oncogenic potential. DBDPE administered to rats at doses of 0.01, 0.1, or 1.0 mg/kg/day for 2 years showed no evidence of oncogenicity (Ref. 1). However, another bioassay performed by NTP, which was specifically designed to determine oncogenic potential, found oncogenicity expressed in both male and female rats. There was also some evidence of oncogenicity in male mice, but no evidence in female mice (Ref. 7). Dose levels in the NTP study were targeted at 25,000 and 50,000 ppm in the diet (approximately 1,250 and 2,500 mg/kg/day). Specific lesions in the form of neoplastic nodules were noted in the liver of the male and female rats and hepatocellular carcinomas or adenomas in male mice. DBDPE has, as a result of this study, been classified as a possible human carcinogen, class C (Ref. 5).

5. *Mutagenicity.* As reported by the ITC, mutagenicity testing performed to date has been negative for all five of these substances. Ames *Salmonella* testing was completed, with and withou activation, for all five substances. A *Saccharomyces* assay for OBDPE was

also done (Ref 1). Beyond this, additional testing has been done only for DBDPE, consisting of an *in vitro* cytogenetic assay in Chinese hamster ovary (CHO) cells, an *in vitro* sister chromatid exchange assay, a mouse lymphoma assay, and an *in vivo* study in rats, examining rat bone marrow cells. DBDPE gave no evidence of mutagenicity in these tests (Ref. 1).

6. *Developmental toxicity.* OBDPE was administered by gavage to 10 rats per dose group at doses of 2.5, 10, 15, 25, or 50 mg/kg on days 6 through 15 of gestation. The results were reduced ossification, a decrease in mean fetal weight, and an increase in post-implantation losses in the high-dose group. The NOAEL was 2.5 mg/kg/day, while the LOAEL was 10 mg/kg/day, based on decreased fetal weight (Refs. 1 and 5). The observed toxic effect on the offspring was attributed by the study investigators to maternal toxicity, which was observed at the high dose level.

DBDPE when administered to rats at doses of 10, 100, or 1,000 mg/kg showed no statistically significant developmental toxicity. However, there was an increase in subcutaneous edema and delayed ossification in the fetuses, with effects seen even at the lowest dose (10 mg/kg) tested (Refs. 1 and 5).The ITC also reported that BTBPE, tested at doses from 30 mg/kg to 10,000 mg/kg in rats, and HBCD administered to rats at 0.01, 0.1, or 1 percent of the diet (high dose approximately 500 mg/kg) during days 0 to 20 of gestation, showed no developmental effects (Ref. 1).

7. *Reproductive effects.* Only DBDPE, of these five substances, has been tested for reproductive effects. In a single-generation study, DBDPE was administered to rats at doses of 3, 30, or 100 mg/kg for 90 days prior to mating and through lactation. DBDPE had no effects on the offspring of these rats (Ref. 1).

8. *Neurotoxicity.* No neurotoxicity testing has been performed for any of these substances. However, acute studies on PBDPE saw diminished motor activity in rats during 1–hour exposures by inhalation to concentrations up to 200 mg/L (about 4.8 mg/kg). In another PBDPE study in rats, forelimb tremors and reduced motor activity were observed at an oral dose $\geq$ 4,000 mg/kg, but not at the lower doses (Ref. 1).

E. Environmental Effects

1. *Acute and short-term effects.* Acute toxicity is usually determined by exposing test organisms for a relatively short period (e.g., 48 or 96 hours). To see the measured effect (usually lethality) the doses used must normally be much higher than those required to exert an often more subtle effect (e.g., decreased reproduction or growth) looked for in a longer-term, chronic test. For these BFRs, determining their acute toxicity is problematic. Limited aquatic toxicity data indicate that their acute toxicity values exceed their (very low) water solubility, obfuscating interpretation of the results. The EC50 of DBDPE to algae was >1 mg/L (Ref. 1). This value greatly exceeded DBDPE's water solubility, determined by Norris (1974) to be between 0.02 and 0.03 mg/L (Refs. 1 and 8). As reported by the ITC, BTBPE LC50 values for bluegill, rainbow trout, and killifish were 1,531, 1,410 and 230 mg/L, respectively (Ref. 1). An algal study with HBCD by Walsh et al. (1987) gave an EC50 between 0.01 and 0.14 mg/L, indicating high toxicity to algae but still exceeding HBCD's reported water solubility of 0.008 mg/L (Refs. 1 and 9). The highest treatment concentration of a toxicity study should not exceed the aqueous solubility limit of the chemical. Ambient concentrations of chemicals rarely, if ever, exceed the aqueous solubility limits.

2. *Chronic toxicity and bioconcentration studies.* No chronic studies were found for any of these BFRs. Bioconcentration factors (BCFs) were determined for PBDPE and OBDPE by exposing carp to each of these chemicals for 8 weeks. The BCFs were 5,380 for carp exposed to PBDPE at 105 μg/L, and 11,700 when the water concentration was 9.7 μg/L. Using the same methodology, the BCF for OBDPE was $\leq$ 3.8 (Ref. 1). In a nonstandard bioconcentration test, Norris et al. (1974) found that when rainbow trout were exposed to 20 μg/L DBDPE for 48 hours, the fish contained only 6 μg/L at the end of the test period, which may indicate slow uptake (Refs. 1 and 8).

Carp were also exposed to 0.27 or 0.026 mg/L BTBPE for 8 weeks. For these two exposure concentrations, the respective bioconcentration factors in carp were 27 and 43 (Ref.1).

No elimination half-lives were reported for any of these bioconcentration studies.

F. Chemical Fate

Limited chemical fate information was available for the BFRs. Water solubility values estimated or determined for these BFRs are 0.6 ppb (PBDPE), 20 to 30 ppb (OBDPE and DBDPE), 200 ppb (BTBPE), and 8 ppb (HBCD) (Ref. 1). Octanol/water partition (Log K_{ow}) coefficients, which are negatively correlated with water solubility, are given as 7.8 (PBDPE), 5.5 (OBDPE), 5.24 (DBDPE), 3.14 (BTBPE), and 5.81 (HBCD) (Ref. 1). The ITC also reported that for the three biphenyl ether compounds vapor pressures are estimated to be less than 10^{-6} mm Hg (Ref. 1). BTBPE and HBCD should have similarly low vapor pressures. From these factors, low water solubility, high Log K_{ow} values and low vapor pressure, the ITC anticipated that the BFRs are likely to partition to soil, sediments, and biota (Ref. 1). However, even though these compounds may have low vapor pressures, their very low water solubility means that they may volatilize from water and soil/sediments and hence also partition to the atmosphere.

There is little other fate information. Shake-flask biodegradation of BTBPE showed that BTBPE is degraded, although indicating slow rates; and an aerobic study showed that HBCD might be degraded under certain conditions (Ref. 1). Norris et al. (1974) found that DBDPE could be degraded by photolysis, although no rates of photolysis were reported. Similarly, BTBPE was degraded when exposed to ultraviolet (UV) light (Refs. 1 and 8).

III. Findings

EPA is basing its proposed testing of PBDPE, OBDPE, DBDPE, BTBPE, and HBCD on the authority of section 4(a)(1)(A) of TSCA. EPA considers these findings to be sufficient for the testing proposed in this rule. However, as noted in Unit I.B. of this preamble, EPA reserves its right to also make findings under TSCA section 4(a)(1)(B) in the future for these BFRs.

Under TSCA 4(a)(1)(A), EPA finds that the manufacturing, processing, distribution in commerce, use, or disposal of BFRs may present an unreasonable risk of injury to health and to the environment.

Although there were mixed results, available data indicate that these BFRs may have the potential to exert developmental toxicity effects as described in Unit II.D.6. of this preamble. EPA also believes that these BFRs may have the potential to bioaccumulate in animal tissues, in which case the full expression of their general toxicity may be missed in a test less than a full chronic assay.

Available data further indicate that DBDPE is a potential human carcinogen, as shown by positive oncogenicity results in rats and mice in a 2–year bioassay performed by the NTP (Ref.1). EPA also notes that PBDPE and OBDPE are structurally similar to DBDPE and may, therefore, also be potential human oncogens. Furthermore, the three diphenyl ethers and BTBPE are similar in structure to certain polychlorinated dibenzo-*p*-dioxins (PCDDs),

polychlorinated biphenyls (PCBs), and polybrominated biphenyls (PBBs) that have been found to be carcinogenic in animal testing. One chemical which EPA finds structurally similar to the BFRs, tetrachlorobenzo-*p*-dioxin (TCDD), is also a potent immunosuppressor in several species of mammals (Ref. 11). Immunosuppression may be a mechanism enhancing tumor development (Ref. 11).

Immunosuppression is also an important toxicological endpoint in itself, leading to decreased disease resistance. In recent years major dolphin kills have occurred in the United States and Europe. Many of the dolphins found dead or dying were marked by the presence of BFRs, including PBDPE, in their tissues. Suppressed immune function was also seen. Although the putative cause of these deaths is toxic algal blooms ("red tide"), which may also cause immune suppression (Ref. 13), this finding is not certain and other possible causes, such as immune system damage due to toxic pollutants, are still being investigated (Refs. 12 through 16).

As emphasized by the ITC, PBDPE, DBDPE, and BTBPE have been detected in the environment (Ref. 1). PBDPE and DBDPE were found in air, soil, and sediments, and BTBPE was found in air and soil near two U.S. production facilities (Ref. 1). PBDPE has also been detected in dolphins found dead along the U.S. East Coast (Refs. 1 and 3). The ITC has cited several foreign references detailing PBDPE's presence in fish, marine mammals, and birds in Sweden, and in mussels and river sediment in Japan (Refs. 1). DBDPE was also detected in shellfish and sediments in Japan (Ref. 1).

DBDPE is on the list of toxic chemicals for the Toxics Release Inventory (TRI) established under section 313 of the Emergency Planning and Community Right-to-Know Act (Pub. L. 99-499, "EPCRA"). Facilities that manufacture, process or use DBDPE are required to annually report their DBDPE environmental releases to EPA. For the 1987 reporting year, the reported releases were over 155,000 pounds to air, over 20,000 pounds to water, and over 16,000 pounds to land (Ref. 1). While the other BFRs in this proposal are not on the TRI list, similar releases (adjusted for production volume) are likely because of their similarities in structure, manufacturing, processing, and use (Ref. 1).

Considering this evidence, EPA finds that the manufacturing, processing, distribution, use and/or disposal of these BFRs may pose an unreasonable risk of injury to health or to the environment due to developmental, chronic, oncogenic, or immunosuppressant effects. EPA also finds, based on information provided to EPA by the ITC and data EPA possesses, that for all of the proposed testing, insufficient data exist about the health or environmental effects of these BFRs to reasonably determine or predict the impacts of their manufacture, processing, distribution, use and/or disposal; and that testing is needed to develop such data (Refs. 1, 3, and 5).

IV. Proposed Rule and Test Standards

EPA is proposing that health and environmental effects and chemical fate testing be conducted on the BFRs in accordance with specific test guidelines set forth in Title 40 of the Code of Federal Regulations (CFR) as enumerated below in this document, except that the earthworm toxicity, chironomid toxicity, and revised combined chronic toxicity/oncogenicity test guidelines are proposed as written in this notice, and the immunotoxicity and biodegradation in water/sediment test guidelines are incorporated by reference in this notice.

A. Proposed Health Effects Testing and Test Standards

1. *Subchronic and chronic effects.* EPA is proposing subchronic toxicity testing for HBCD as specified in 40 CFR 798.2650.

2. *Neurotoxicity.* EPA is proposing neurotoxicity testing, including neuropathology, motor activity, and a functional observational battery for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 798.6400, 798.6200, and 798.6050.

3. *Reproductive effects.* EPA is proposing reproductive effects testing for PBDPE, OBDPE, BTBPE, and HBCD as specified in 40 CFR 798.4700. EPA finds the existing reproductive effects data available for DBDPE are inadequate (EPA believes that a 2-generation study is necessary for adequacy) and is therefore proposing reproductive effects testing for DBDPE, also. If this testing on PBDPE and DBDPE, which EPA is proposing to be performed prior to testing OBDPE, indicates to EPA that lack of reproductive effects cannot be reasonably predicted for OBDPE (i.e., if either PBDPE or DBDPE elicit reproductive effects), then EPA would require the initiation of testing on OBDPE by certified letter to the test sponsor(s).

4. *Developmental toxicity.* EPA is proposing developmental toxicity testing for PBDPE, as specified in 40 CFR 798.4900, in two mammalian species, a rat and a non-rodent. EPA is also proposing developmental effects studies in two species for OBDPE and HBCD. A developmental effects study in rats submitted to EPA for HBCD is inadequate due to incomplete reporting and to too few animals sampled in the study. A study in rats submitted for OBDPE is also not considered adequate by EPA because of too few animals used in the study (EPA requires 20 animals per dose group versus the 10 used). For DBDPE and BTBPE, EPA is proposing developmental effects testing in a non-rodent species only. Studies in rats submitted for DBDPE and BTBPE are adequate.

5. *Mutagenicity.* EPA is proposing tiered mutagenicity testing for each of the BFRs. For PBDPE, OBDPE and BTBPE, the available (negative) *Salmonella*/Ames data are adequate. For HBCD, the available *Salmonella* data (weakly positive) are also adequate. However, the *Salmonella* data on OBDPE are inconclusive, and, therefore, inadequate. Consequently, EPA is proposing *Salmonella* testing as specified in 40 CFR 798.5265 for OBDPE.

EPA is also proposing an *in vitro* gene mutation assay for PBDPE, OBDPE, BTBPE, and HBCD as specified in 40 CFR 798.5300. Available data on DBDPE are adequate for this effect. EPA is further proposing an *in vivo* cytogenetic assay, either as specified in 40 CFR 798.5385 (bone marrow aberrations) or 40 CFR 798.5395 (bone marrow micronucleus) for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD. An available *in vivo* bone marrow assay, presented no data in support of the conclusion that DBDPE does not induce chromosomal aberrations (Ref. 17). Therefore, EPA considers this study inadequate to address the concern for *in vivo* gene mutation effects for DBDPE.

EPA is also proposing that, for any of these substances, if either the proposed *Salmonella* or *in vitro* gene mutation testing yields positive mutagenicity results, then a sex-linked recessive lethal (SLRL) test in *Drosophila melanogaster* shall be conducted for that substance in accordance with 40 CFR 798.5275. If the SLRL test in *Drosophila melanogaster* is positive for any of these substances, then either a mouse visible or mouse biochemical specific locus test (MVSL or MBSL) shall also be conducted for that substance as specified in 40 CFR 798.5200 (MVSL) or 40 CFR 798.5195 (MBSL).

EPA is further proposing that, for any of these substances, if the proposed *in vivo* cytogenetics assay yields positive results, then a dominant lethal assay shall be conducted for that substance as specified in 40 CFR 798.5450. If the

dominant lethal assay is positive for any of these substances then a heritable translocation assay would also be conducted for that substance in accordance with 40 CFR 798.5460.

6. *Oncogenicity and chronic toxicity.* EPA is proposing oncogenicity testing for PBDPE, OBDPE, BTBPE in mice as specified in 40 CFR 798.3300; EPA is further proposing that chronic effects and oncogenicity testing in rats be combined as specified in 40 CFR 798.3320 (which is modified in this proposed rule).

For HBCD, EPA is proposing oncogenicity testing in both rats and mice as specified in 40 CFR 798.3300 if positive mutagenicity results are obtained in either the gene mutation cells in culture assay, the sex-linked recessive lethal assay in *Drosophila melanogaster*, or the *in vivo* cytogenetics assay.

B. Proposed Environmental Effects Testing and Test Standards

For the following proposed environmental effects testing of the three diphenyl ethers, EPA is proposing that testing first be conducted on PBDPE. Only if testing on PBDPE yields a specified effect, would testing of OBDPE and DBDPE be required. EPA believes a tiered approach to testing the three diphenyl ethers for environmental effects is reasonable, given their similar structures and the possibility of limited toxicity or bioconcentration being expressed because of the large molecular size and low water solubility of these BFRs (Ref. 1). The alkyl phthalates consent order (54 FR 618, January 9, 1989) employed a similar approach.

EPA does not believe it can apply the results for PBDPE to BTBPE or HBCD and therefore testing of BTBPE and HBCD would proceed independently of the PBDPE testing.

EPA also believes, given the anticipated chemical and physical properties of the BFRs, that before testing for environmental effects begins, basic chemical fate data are needed on water solubility, vapor pressure, and degradation rates. The results of the chemical fate tests would identify upper levels for aquatic test concentrations and indicate potential testing problems. EPA is therefore proposing that this testing, with a reporting deadline of 6 months, be performed prior to initiating the environmental effects testing.

1. *Algal testing.* EPA is proposing that an algal assay be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1050. Data on HBCD are inadequate for this effect due to questionable test substance purity. The analytical standard for measuring treatment concentrations was also not reported. Testing for OBDPE and DBDPE would be conditioned on obtaining from the algal testing of PBDPE an EC50 of $\leqq$ 10 μg/L.

2. *Fish chronic toxicity.* EPA is proposing that chronic toxicity to fish be evaluated by conducting fish early life stage toxicity testing for rainbow trout and sheepshead minnow for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1600. Testing for OBDPE and DBDPE for both fish species would be conditioned on obtaining from the early life stage testing of PBDPE a geometric mean maximum acceptable toxicant concentration (MATC) value of $\leqq$ 10 μg/L.

3. *Invertebrate chronic toxicity.* EPA is proposing that aquatic invertebrate toxicity testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1330, for *daphnids*, and 40 CFR 797.1950, for mysid shrimp. Tests for OBDPE and DBDPE, for both organisms, would be conditioned on obtaining from either of the invertebrate chronic tests of PBDPE a geometric mean MATC value of $\leqq$ 10 μg/L.

4. *Benthic organism toxicity.* EPA believes that, because of the expected tendency of these BFRs to partition into aquatic sediments, chronic testing on benthic organisms should be conducted with the midge (*Chironomus tetans* or *C. riparius*) for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as proposed in a new 40 CFR 795.135. Testing for OBDPE and DBDPE would be conditioned on obtaining from the benthic organism testing a geometric mean MATC value of $\leqq$ 100 mg PBDPE/kg dry weight of sediment.

5. *Terrestrial organism toxicity.* EPA is proposing that toxicity to terrestrial organisms be evaluated for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by conducting mallard reproduction testing as specified in 40 CFR 797.2150, and earthworm toxicity testing as proposed in a new 40 CFR 795.150. Mallard reproduction testing for OBDPE and DBDPE would be conditioned on obtaining from the mallard testing of PBDPE a NOEL of $\leqq$ 500 ppm; and earthworm toxicity testing for OBDPE and DBDPE would be conditioned on obtaining from the earthworm testing of PBDPE an EC50 of $\leqq$ 100 mg PBDPE/kg dry weight of soil.

6. *Terrestrial plant toxicity.* EPA is proposing that toxicity to terrestrial plants be evaluated for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by conducting seed germination/root elongation toxicity testing as specified in 40 CFR 797.2750 and early seedling growth toxicity testing as specified in 40 CFR 797.2800. Both tests for OBDPE and DBDPE would be conditioned on obtaining an EC50 of $\leqq$ 100 mg PBDPE/kg dry weight of soil in either test.

7. *Immunotoxicity.* EPA is proposing that immunotoxicity testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD using the Jerne Plaque Assay, which is proposed to be incorporated by reference. Immunotoxicity testing for OBDPE and DBDPE would be conditioned on obtaining from the immunotoxicity testing of PBDPE a NOEL of $\leqq$ 500 ppm.

8. *Bioconcentration.* EPA is proposing that bioconcentration testing be conducted in an acceptable fish species (fathead minnow, *Pimephales promelas*) for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1520 (but modified to extend the exposure period to 91 days). Bioconcentration testing for OBDPE, and DBDPE would be conditioned on obtaining a bioconcentration factor of $\geqq$ 1,000 with PBDPE.

C. Proposed Chemical Fate Testing and Test Standards

1. *Water solubility.* EPA is proposing that water solubility be determined using the generator column method for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.1860. EPA is also proposing that BFRs, which may have a water solubility of 10 ppb or less, be analyzed utilizing an electron-capture detector. Since an accurate measurement technique for the BFRs is available, these water solubilities shall be determined and reported, even if they are less than 10 ppb. Although EPA has water solubility figures for these substances, they are only estimates in the case of PBDPE, and were determined by inappropriate methodology in the case of OBDPE and DBDPE. Although the ITC did not recommend water solubility testing for BTBPE and HBCD, EPA believes a more rigorous procedure is warranted for these low water soluble compounds. Specifically, EPA is proposing that water solubility be determined not only in pure water, but also in dilution water. This is because water solubility as it is normally determined (in distilled water) may differ from what is obtained in the (dilution) water used for the aquatic toxicity tests. An accurate determination in dilution water at the salinity and temperature to be used in the toxicity tests is necessary to select the maximum concentration of test chemical in these tests.

2. *Octanol/water partitioning.* EPA is proposing that octanol/water partition

coefficients (K_{ow} values) be determined using the generator column method for PBDPE, OBDPE, and DBDPE, as specified in 40 CFR 796.1720. EPA finds present K_{ow} values inadequate because of inappropriate test methodologies.

3. *Vapor pressure.* EPA is proposing that vapor pressure be determined for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.1950.

4. *Sediment and soil adsorption.* EPA is proposing that sediment and soil adsorption testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.2750.

5. *Direct and indirect photolysis.* EPA is proposing that direct and indirect photolysis testing be conducted on the pure compounds; i.e., congenerically pure PBDPE, OBDPE, DBDPE, BTBPE and HBCD (see Unit IV.D. of this preamble), as specified in 40 CFR 796.3780, 796.3800 and 796.3700.

6. *Aerobic biodegradation in water/sediment.* EPA is proposing that aerobic biodegradation in water/sediment be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD using the ecocore system described by A.W. Bourquin, which is proposed to be incorporated by reference. EPA has examined the method described in A.W. Bourquin and has developed a sample matrix, available in the public record, for conducting preliminary and definitive core-chamber biodegradation tests using this method (Ref. 18). Testing for OBDPE and DBDPE would be conditioned on obtaining mineralization to CO_2 greater than 10 percent for PBDPE.

7. *Anaerobic biodegradation.* EPA is proposing that anaerobic biodegradation testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.3140. The ITC noted, and EPA anticipates, that these substances may undergo reductive debromination. Therefore, this anaerobic biodegradation testing on OBDPE and DBDPE is not conditioned on the results for PBDPE.

D. Test Substances

EPA is proposing testing of PBDPE, OBDPE, DBDPE, BTBPE, and HBCD of at least 98 percent purity as the test substances. EPA recognizes that the three diphenyl ethers are not pure congeneric forms, with each having a single level of bromination (i.e., purely "penta," "octa" or "deca" brominated forms). EPA also recognizes that they are not pure isomers (i.e., brominated not only at a specific level, but also at specific positions on the diphenyl ether molecule). Instead, they are a complex composition of diphenyl ether compounds brominated to different degrees and at different positions (Ref. 16). For example, PBDPE is composed of primarily tetra-, penta-, and hexabrominated diphenyl ethers but with even higher and lower brominated forms present in commercial PBDPE.

EPA is proposing that the test substance reflect the composition of the commercial substance in terms of the mix of the individual brominated congeners present in the commercial substance. The purity specifications proposed above pertain to reducing the amount of chemicals other than brominated diphenyl ethers present in the test substance. EPA is further proposing that the test substance being used in each test be analyzed to determine the percent composition of the different brominated congeners present.

EPA has specified relatively pure substances for testing because EPA is interested in evaluating the effects attributed to the subject substances themselves. This increases the likelihood that any toxic effects observed are related to the subject BFRs and not to any impurities. Potential test sponsors for the three diphenyl ethers and for BTBPE should also be aware of EPA's concern that these BFRs may be contaminated with halogenated dibenzodioxins (HDDs)/dibenzofurans (HDFs) as set forth in 40 CFR part 766. Given the known toxicity of these impurities, test sponsors should take special care to eliminate or minimize any possible contamination with HDDs/HDFs, where they believe these contaminants may be present.

EPA solicits comments on the test substance composition. (see Unit V of this preamble).

E. 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 PBDPE, OBDPE, DBDPE, BTBPE and/or HBCD, 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. Byproduct manufacturers and importers of PBDPE, OBDPE, DBDPE, BTBPE, and/or HBCD are considered manufacturers under this rule. As explained in 40 CFR part 790, manufacturers but not small quantity manufacturers, processors, or research and development manufacturers of PBDPE, OBDPE, DBDPE, BTBPE, and/or HBCD would be required to submit letters of intent or exemption applications.

EPA has specified relatively pure substances for testing. EPA would not require submission of equivalence data as a condition for exemption from testing since EPA is interested in evaluating the effects attributable to PBDPE, OBDPE, DBDPE, BTBPE, and/or HBCD.

F. Reporting Requirements

Data developed under the final rule would be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards, 40 CFR part 792.

As required by section 4(b)(1)(C) of TSCA, EPA is proposing specific reporting requirements for each of the proposed tests for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in the following Table 1.

TABLE 1.—PROPOSED HEALTH AND ENVIRONMENTAL EFFECTS AND CHEMICAL FATE TESTING AND REPORTING REQUIREMENTS FOR THE BFRS

Test Standard in 40 CFR	Test substances	Reporting deadline for final report(months)[1]	Number interim(6 month) reports required[1]
A. Health Effects:			
Subchronic toxicity[2] (§ 798.2650)	HBCD	18	2
Combined chronic toxicity/oncogenicity (§ 798.3320)	PBDPE, OBDPE, BTBPE	53	8
Oncogenicity (§ 798.3300)	PBDPE, OBDPE, BTBPE, HBCD	53	8

TABLE 1.—PROPOSED HEALTH AND ENVIRONMENTAL EFFECTS AND CHEMICAL FATE TESTING AND REPORTING REQUIREMENTS FOR THE BFRS—Continued

Test Standard in 40 CFR	Test substances	Reporting deadline for final report(months)[1]	Number interim(6 month) reports required[1]
Neurotoxicity (§ 798.6065, 798.6200, 798.6400)	PBDPE, OBDPE, DBDPE, BTBPE,HBCD	21	3
Reproductive toxicity[2] (§ 798.4700)	PBDPE, OBDPE, BTBPE, HBCD, DBDPE	29	4
Developmental toxicity (§ 798.4900)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	12	1
Salmonella assay (§ 798.5265)	OBDPE	9	1
In vitro gene mutation assay (§ 798.5300)	PBDPE, OBDPE, BTBPE, HBCD	10	1
In vivo cytogenetics assay (§ 798.5385 or 798.5395)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	14	2
Drosophila sex-linked recessive lethal test[2] (§ 798.5275)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	22	1
Mouse specific locus test[2] (§ 798.5200 or 798.5195)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	51	8
Rodent dominant lethal test[2] (§ 798.5450)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	36	3
Heritable translocation test[2] (§ 798.5460)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	25	4
B. Environmental Effects:			
Algal test[2] (§ 797.1050)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Rainbow trout life stage test[2] (§ 797.1600)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Sheepshead minnow life stage test[2] (§ 797.1600)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Daphnid chronic test[2] (§ 797.1330)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Mysid shrimp chronic test[2] (§ 797.1950)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Chironomid sediment toxicity test[2] (§ 795.135)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Mallard reproduction test[2] (§ 797.2150)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Earthworm toxicity test[2] (§ 795.150)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Seed germination/root elongation test[2] (§ 797.2750)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Early seedling growth test[2] (§ 797.2800)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Immunotoxicity test[2]	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Bioconcentration[2] (§ 797.1520)	PBDPE, OBDPE, DBDPE, BTBPE, HBCE	18 [3]30	1 1
C. Chemical Fate:			
Water solubility (§ 796.1860)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0
Log octanol/water partition testing (§ 796.1720)	PBDPE, OBDPE, DBDPE	6	0
Vapor pressure testing (§ 796.1950)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0
Sediment and soil adsorption testing (§ 796.2750)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0
Direct and indirect photolysis testing (§ 796.3780, 796.3800, 796.3700)	PBDPE, OBDPE, DBDPE, BTBPE,HBCD	6	0
Biodegradation testing in water/sediment[2]	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	12 [3]24	1 1
Anaerobic biodegradation testing (§ 796.3140)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0

[1] Figure indicates the reporting deadline in months calculated from the effective date of the final rule or from the date of test sponsor notification by certified letter to initiate test where such notification is specified.
[2] For one or more of these test substances, this test requirement is conditional as described in Unit IV of this preamble.
[3] This figure is the reporting deadline for testing on OBDPE and DBDPE, which is conditioned on results from testing PBDPE.

V. Issues for Comment

EPA welcomes comment on this proposed testing. In particular, EPA solicits comment in the following four areas:

- Test substance composition.
- Categorization for testing purposes.
- New test guidelines.
- Route of test substance administration.

A. Test Substance Composition

EPA is proposing that the test substance used in the testing should represent, with some purity specifications, what is actually manufactured, rather than attempting to

test a single congeneric substance (i.e., a "pure but representative composition" of 4-, 5-, and 6-brominated compounds, which typifies commercial PBDPE is proposed to be tested instead of a composition confined to pentabrominated isomers). On the other hand, EPA also believes that it could be beneficial to use a congenerically pure substance to reduce the number of potentially confounding variables in any future hazard or risk assessment activities for these substances. However, EPA recognizes the potential difficulty in isolating congenerically pure substances of this type, and EPA is also concerned that if congenerically pure substances were used then these test substances would not fairly represent what humans are actually exposed to or what is actually released to the environment (i.e., the commercial mixture). For these reasons, EPA is proposing to require testing of representative test substances composed of differing congeners, similar to what is sold commercially. Nonetheless, EPA is also considering that testing for any or all of the proposed tests may be of congenerically pure substances, if comments and/or data received prior to promulgation convince EPA that these would provide the most useful or interpretable data. For example, EPA is proposing that congenerically pure substances be used in the direct and indirect photolysis testing. EPA believes that the technical limitations inherent in this testing require that congenerically pure substances be used to obtain useful results.

For meaningful interpretation of results, EPA needs to know what is present in the test substance, and EPA is therefore proposing that the test substances be analyzed to determine overall purity and the percentage of each congener present in the mixture. Further, EPA is proposing that, when tested as a commercially representative substance, PBDPE contain not less than 58 percent pentabrominated diphenyl ethers, that OBDPE contain not less than 30 percent octabrominated diphenyl ethers, and that DBDPE contain not less than 98 percent decabrominated diphenyl ethers, and also that BTBPE should contain not less than 98 percent pure 1,2-bis(2,4,6-tribromophenoxy)ethane, and HBCD should contain not less than 98 percent pure hexabromocyclododecane.

For the photolysis tests and any others in which PBDPE, OBDPE, and DBDPE are tested as congenerically pure substances, EPA is proposing that the respective penta-, octa-, and decabrominated isomers make up not less than 98 percent of these substances. EPA is specifically soliciting comments on testing these BFRs in forms representative of what is produced commercially or, instead, as pure congeneric forms; and also on the proposed purity standards and chemical analyses.

B. Chemical Categorization

EPA has concluded that the three diphenyl ethers, PBDPE, OBDPE, and DBDPE, are similar enough in structure to be considered a single category for certain testing purposes. For example, EPA is proposing that reproductive effects testing for OBDPE be conditioned on receiving a positive response with PBDPE or DBDPE. EPA is also proposing to condition the environmental effects testing and one chemical fate test for OBDPE and DBDPE on the results obtained from PBDPE.

EPA is soliciting comment on the scientific appropriateness of conditioning testing in this way for these BFR substances, and also on whether the categorization proposed in this notice is too limited or too broad in the context of each test.

C. Test Guidelines

EPA is proposing three guidelines which are either new or modified, and is also proposing methodologies for two additional tests, which are incorporated by reference.

Both the Chironomid Test and the Earthworm Toxicity Test standards are based on new EPA test guidelines. EPA believes that these tests are necessary, and will help to evaluate the potential risk to benthic aquatic and terrestrial organisms, respectively, from exposure to the BFRs.

The Combined Oncogenicity/Chronic Toxicity guideline, 40 CFR 798.3320, has never been promulgated as a test standard in any test rule. EPA is proposing that certain aspects of the Combined Oncogenicity/Chronic Toxicity guideline be made "shall" rather than "should" testing requirements to make these parts of the guideline enforceable. EPA considers a "shall" requirement to be an essential aspect of the test methodology. Violation of a "shall" requirement is considered a serious breach of test performance and may result in penalties and/or non-acceptance of the test results by EPA.

A fourth test, the Jerne Plaque Assay, is being proposed for BFRs. The Jerne Plaque Assay would be incorporated by reference in the final test rule. The Jerne Plaque Assay evaluates immunotoxicity in mice and is a standard test for this effect. Although this test is a surrogate human health effects test, EPA believes that this test is also adequate for evaluating the risk of possible immunotoxicity effects in environmental species, especially mammals.

Finally, EPA is proposing an aerobic biodegradation test in water/sediment (also known as the ecocore test system) using the methodology of A.W. Bourquin, which would be incorporated by reference in the final test rule. EPA has required the ecocore test system in previous EPA test rules (e.g., in the final test rule for tetrabromobisphenol A, 52 FR 25219, July 6, 1987).

EPA solicits comment on these five protocols.

D. Route of Test Substance Administration

Although a major route of exposure of humans to the BFRs is by inhalation, it is difficult in toxicity testing to maintain consistent, reliable exposures of powdery solid test substances like the BFRs using the inhalation route of administration. Therefore, EPA is proposing that the health effects testing be conducted by the oral route. Specifically, EPA is proposing testing by gavage, because it believes that this route will provide a consistent, reliable dose and reliable results. EPA does not believe, in this case, that the toxicology of the BFRs using the oral route will be significantly different from the inhalation route. Previous testing done on the BFRs by the oral route has shown effects on the liver consistent with those of a 14–day inhalation study. Furthermore, the only positive oncogenicity assay (with DBDPE) was also performed using an oral (dietary) route of administration. However, EPA is soliciting comments on this issue, and if comments indicate that the inhalation (or other route) should be used, in any or all testing, then EPA may require that route of administration.

VI. Economic Analysis of the Proposed Rule

EPA prepared an economic analysis that evaluates the potential for significant economic impacts as a result of the proposed testing. (Ref. 2). Total testing costs are estimated to range from $11.6 to $19.1 million. These costs have been annualized and compared with annual revenue as an indication of potential impact. These annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of

15 years, are as follows: DBDPE — $102,000 to $154,000; HBCD — $254,000 to $427,000; BPDPE and BTBPE -$309,000 to 504,000; and OBDPE — $308,000 to $505,000. The production volume and price information have been claimed confidential and are contained in the economic analysis, which is being treated as CBI.

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. (Ref. 19).

VIII. Public Meeting

If requests for oral comments are submitted, 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 August 9, 1991. The meeting will be open to the public, but active participation will be limited to those who requested to comment and EPA representatives. 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, if possible, 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–42115). 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 Reading Room, G–004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The record includes the following information:

A. Supporting Documentation

(1) Notice containing the ITC designation.

(2) **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).

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

B. References

(1) USEPA. U.S. Environmental Protection Agency. "Twenty-fifth Report of the Interagency Testing Committee to the Administrator; receipt of report and request for comments regarding priority list of chemicals." (December 12, 1989, 54 FR 51114).

(2) Szarek, P. "Economic analysis of proposed test rule for five brominated flame retardants non-CBI version". Memorandum from Pat Szarek to John Schaeffer, USEPA, Office of Pesticides and Toxic Substances, Washington DC (October, 1990).

(3) USEPA. Environmental Research Laboratory, Duluth MN. "Brominated chemicals as marine contaminants." Memorandum from Steven J. Broderius to Maurice Zeeman, Washington, DC, Office of Toxic Substances, USEPA (February 14, 1990).

(4) MRI. Midwest Research Institute "Mass spectral confirmation of chlorinated and brominated diphenyl ethers in human adipose tissues." Final Report for USEPA, Exposure Evaluation Division, Office of Toxic Substances, EPA Contract No. 68–02–4252. (June, 1990).

(5) USEPA. "Brominated flame retardants--post-RM 1 meeting revision of HERD testing recommendations". Memorandum from Mark W. Townsend to Gary E. Timm, Washington, DC, Office of Pesticides and Toxic Substances, USEPA (June 18, 1990).

(6) NTP. National Toxicology Program. "Toxicology and carcinogenesis studies of decabromodiphenyl oxide (CAS No. 1163–19–5) in F344/N rats and B6C3F1 mice (feed studies)." NTP Technical Report Series No. 309, U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health (1986).

(7) Kociba, R.J., Frauson, L.O., Humiston, C.G., Norris, J.M., Wade, C.E., Lisowe, R.W., Quast, J.F., Jersey , G.C., and Jewett, G.L. "Results of a two–year dietary feeding study with decabromodiphenyl oxide (DBDPO) in rats." *Journal of Fire and Flammability/Combustion Toxicology.* 2:267–285 (1975).

(8) Norris, J.M., Ehrmantraut, J.W., Gibbons, C.L., Kociba, R.J., Schwetz, B.A., Rose, J.Q., Humiston, C.G., Jewett, G.L., Crummett, W.B., Gehring, P.J., Tirsell, J.B., and Brosier, J.S. "Toxicological and environmental factors involved in the selection of decabromodiphenyl oxide as a fire retardant chemical." *Journal of Fire and Flammability/Combustion Toxicology, Supplement.* 1:52–77 (1974).

(9) Walsh, G.E., Yoder, M.J., McLaughlin, L.L and Lores, E.M. "Responses of marine unicellular algae to brominated organic compounds in six growth media." *Ecotoxicology and Environmental Safety.* 14:215–222 (1987).

(10) Wong, K.F. "Production/exposure profile for brominated diphenyl oxide." USEPA, Office of Toxic Substances, Chemical Engineering Branch (January 7, 1986).

(11) USEPA. "Twenty-fifth ITC report comments on the oncogenicity testing recommendations for five brominated flame retardants." Memorandum from Ann Clevenger to Carol A. Bellizzi, Washington, DC, Office of Pesticides and Toxic Substances, USEPA (February 2, 1990).

(12) Times Wire Service. "Dolphin deaths traced to 'red tide'." *Los Angeles Times*, Section 1, page 2 (February 1, 1989).

(13) Hilts, P.J., and Leff, L. "Toxic algae killed dolphins; marine mammal catastrophe blamed on poisonous 'red tide'." *The Washington Post*, Metro section, page D 01 (February 2, 1989).

(14) Jones, J.L. "Navy asked to help ill dolphins", *Los Angeles Times*, Orange County Edition, Metro section, page 3 (November 17, 1989).

(15) Lancaster, J. "New surge in dolphin deaths triggers probe; more than 300 bottlenoses have washed ashore from Gulf of Mexico since January." *The Washington Post*, Section A, page A 21 (May 11, 1990).

(16) Carlson, G.P. "Induction of xenobiotic metabolism in rats by short-term administration of brominated diphenyl ethers." *Toxicology Letters.* 5:19–25 (1980).

(17) Norris, J.M., Kociba, R.J., Schwetz, B.A., Rose, J.Q., Humiston, C.G., Jewett, G.L., Gehring, P.J., and Mailhes, J.B. "Toxicology of Octabromobiphenyl and Decabromodiphenyl Oxide." *Environmental Health Perspectives.* 11:153–161 (1975).

(18) USEPA. "Matrix for conducting preliminary and definitive core-chamber biodegradation tests." Draft paper by John D. Walker, Washington, DC, Office of Toxic Substances, USEPA (May 11, 1988).

(19) 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 199[illegible]).

XI. Othe 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 if promulgated, 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 average 68,800 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. The total public reporting burden is estimated to be 206,400 hours for all responses.

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 Parts 795, 798 and 799

Chemicals, Chemical export, Chemical fate, Environmental effects, Environmental protection, Hazardous substances, Health effects, Incorporation by reference, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: June 17, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

1. In part 795

PART 795 — [AMENDED]

a. By revising the authority citation for part 795 to read as follows:

Authority: 15 U.S.C. 2601, 2603

b. By adding § 795.135 to read as follows:

§ 795.135 Chironomid sediment toxicity test.

(a) *Purpose.* This guideline may be used to develop data on the toxicity and bioavailability of chemical substances and mixtures ("chemicals") in sediments subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469,90 Stat. 2003, 15 U.S.C. 2601 et. seq.). This guideline prescribes tests to be used to develop data on the toxicity of chemicals present in sediments to chironomid larvae (midges). The U.S. Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of TSCA and 40 CFR part 792, Good Laboratory Practice Standards (GLPS), apply to this test guideline. In addition, the following definitions also apply:

Bioconcentration Factor (BCF) is the quotient of the concentration of a test substance in tissues of the chironomids at or over a specific time period of exposure divided by the concentration of test substance in the overlying water, interstitial water, or in the sediments at or during the same time period.

Cation exchange capacity (CEC) means the sum total of exchangable cations that a sediment can absorb. The CEC is expressed in milliequivalents of negative charge per 100 grams (meg/100g) or milliequivalents of negative charge per gram (meq/g) of sediment (dry weight).

EC50 means an experimentally-derived concentration of test substance in the sediment that is calculated to affect 50 percent of a test population during continuous exposure over a specified period of time.

Flow-through means a continuous or intermittent passage of dilution water through a test chamber or culture tank with no recycling of water.

Geometric mean MATC is the calculated mean between the highest test concentration with no statistically significant effects and the lowest concentration showing significant effects.

Interstitial water is liquid which is found in or directly adjacent to sediments and can be extracted from these sediments by several processes.

Loading means the ratio of chironomid biomass (grams wet weight) to the volume (liters) of test solution in a test chamber at a point in time or passing through the test chamber during a specific interval.

Lowest observed effect concentration (LOEC) means the lowest treatment (i.e., test concentration) of a test substance that is statistically different in adverse effect on a specific population of test organisms from that observed in controls.

MATC (Maximum Acceptable Toxicant Concentration) means the maximum concentration at which a chemical may be present and not be toxic to the test organism.

No observed effect concentration (NOEC) means the highest treatment (i.e., test concentration) of a test substance that shows no statistical difference in adverse effect on a specific population of test organisms from that observed in controls.

Overlying water is liquid which is found above or placed over sediments. For purposes of this guideline, overlying water is equivalent to the term "water column".

Partial life-cycle toxicity test is one which uses a sensitive portion of the life of a test organism (second instar of midges) to assess the effects of test substances.

Redox potential (E_h) means the oxidizing or reducing intensity or condition of a solution expressed as a current, referenced against a hydrogen electrode. Within wet sediments

reducing conditions prevail such that zero or negative E_h values may be present.

Sediment is matter which settles to the bottom of a liquid in natural situations or a substrate prepared from a combination of natural sediments and artificial components. "Sediment" is equivalent to the term "solid-phase sediments" in this guideline.

Sediment partition coefficient is the ratio of the concentration of test substance on the sediment to the concentration in the overlying water. For the purposes of this guideline, this term is identical to "soil-water partition coefficient."

Spiking is the addition of a test substance to a negative control and/or reference sediment so that the toxicity of a known quantity of test substance can be determined in a known nontoxic sediment. Often a solvent carrier is needed for low-water soluble test substances.

Subchronic toxicity test means a method used to determine the concentration of a test substance in water and for sediment which produces an adverse effect on chironomids over a partially extended period of time. In this guideline, mortality and growth (expressed as change in wet weight of midges) are the criteria of toxicity.

(c) *Test procedures* — (1) *Summary of test.* (i) This flow-through test consists of three parts. First is a 14–day aqueous exposure test, with minimal sediments, with food, and with the test substance added to the overlying water. Second is a 14–day sediment exposure test, with one or more sediments (4 to 6 cm in thickness) which may have varying amounts of organic carbon, with food, and with the test substance added to sediment(s). Third is a 14–day interstitial exposure test, with one or more sediments (4 to 6 cm in thickness) which may have varying amounts of organic carbon, with food, and with the test substance added to overlying water. The flow-through test is illustrated in the following Table 1.

TABLE 1.—EXPERIMENTAL DESIGN FOR THE CHIRONOMID SEDIMENT FLOW-THROUGH TOXICITY TEST

Test system	Test substance concentrations (2 reps ea) [a]	Number of sediments (2 reps ea)	Number of Samples Analyzed (2 reps ea)			
			Overlying water P/C [b]	Interstitial water P/C [b]	Sediments	Midges [c]
1. 14–Day Aqueous Exposure	5(10)	NA[d]	5(10)	NA	NA	5(10)
Control (2 reps)	NA	NA	1(2)	NA	NA	1(2)
Solvent Control (2 reps)	NA	NA	1(2)	NA	NA	1(2)
2. 14–Day Sediment Exposure	5(10)	1-3 [e]	(2-6)	5(10)	NA	5(10)
Control (2 reps)	NA	1(2)	1(2)	NA	1(2)	1(2)
Solvent Control (2 reps)	NA	1(2)	1(2)	NA	1(2)	1(2)
3. 14–Day Interstitial Water/Sediment Exposure	5(10)	1-3[e]	(2-6)	5(10)	5(10)	5(10)
Control (2 reps)	NA	1(2)	1(2)	1(2)	1(2)	1(2)
Solvent Control (2 reps)	NA	1(2)	1(2)	1(2)	1(2)	1(2)

[a] Test substance concentration in all replicates measured at days 0 and 14. Reps = replicates
[b] P/C = physical chemical measurements (dissolved oxygen, temperature (°C), and pH) on days 0, 4, 7, 10, and 14.
[c] Midges are observed throughout the test, dead chironomids recorded, removed and weighed on days 4, 7, and 10. At end of each test, remaining midges from each replicate are removed, counted, and weighed.
[d] NA = not applicable
[e] Number of sediment types tested will depend on range of TOC content tested; 1 to 3 types (low, medium, and high TOC levels) are recommended.

(ii) The day before the test is to be started, sediments (in treatments, and reference and negative controls) shall be screened to remove large particles and endemic animals (especially midge predators) added to the test chambers. The amount of sediments to be added to each test chamber will depend on the experimental design and test species. Only a minimum amount (2mm) shall be added in the aqueous exposure portion of the test. Each replicate test chamber should contain the same amount of sediments. Overlying water shall then be added to each test chamber.

(iii) In this flow–through test, the flow of dilution water through each chamber is begun and then adjusted to the rate desired. The test substance shall be introduced into each test chamber. The addition of test substance in the flow-through system shall be done at a rate which is sufficient to establish and maintain the desired concentration of test substance in the test chamber.

(iv) At the initiation of the test, chironomids which have been cultured or acclimated in accordance with the test design, are randomly placed into the test chambers. Midges in the test chambers are observed periodically during the test. Immobile or dead larvae shall be counted, removed, and weighed, and the findings are recorded. "Floating" larvae are nonviable and shall be replaced. Dissolved oxygen (DO) concentration, pH, temperature, the concentration (measured) of test substance, and other water quality parameters are measured at specified intervals in selected test chambers, during all three parts of this test (See Table 1 in paragraph (c)(1)(i) of this section). Data shall be collected during the test to determine any significant differences ($P \leq 0.05$) in mortality and growth as compared to the controls. BCFs shall be calculated at the end of the test, based on route of exposure.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted prior to beginning each of the three parts of the test to establish test solution concentrations for the three definitive parts of the test.

(ii) The chironomids should be exposed to a series of widely spaced concentrations of the test substance (e.g., 1, 10, 100 mg/L).

(iii) A minimum of 10 chironomids should be exposed to each concentration of test substance for a period of time which allows estimation of appropriate test concentrations. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive portion of the test is to determine concentration-response curves, EC50 values, effects of a chemical on mortality and growth, and the determination of BCFs during subchronic exposure.

(ii) A minimum of 30 midges per concentration (15 midges per replicate test chamber) should be exposed, in each part of the test, to 5 or more concentrations of the test substance chosen in a geometric series in which the ratio is between 1.5 and 2.0 mg/L (e.g., 2, 4, 8, 16, 32, 64 mg/L). An equal number of chironomids should be placed in two replicates. The concentration ranges should be selected to determine the concentration-response curves, EC50 values, and MATC. Solutions should be analyzed for chemical concentration prior to use and at designated times during the test.

(iii) Each test shall include controls consisting of the same dilution water, sediments, conditions, procedures, and midges from the same population (same egg mass in culture container), except that none of the test substance is added.

(iv) The test duration is 14 days for each of the three parts of the test. The test is unacceptable if more than 20 percent of the control organisms are dead, stressed or diseased during the test. For high log K_{ow} chemicals, a test period longer than 14 days may be necessary.

(v) The number of dead chironomids in each test chamber shall be recorded on days 4, 7, 10, and 14 of the test. At the end of the test, surviving midges are removed from the test chambers and weighed after blotting dry. Concentration-response curves, EC50 values, and associated 95 percent confidence limits for mortality shall be determined for days 4, 7, 10, and 14 in the aqueous exposure portion of the test. Also, an MATC, as well as NOEC and LOEC values shall be determined for midge survival and growth.

(vi) In addition to survival and growth, any abnormal behavior or appearance of the chironomids should be reported.

(vii) Distribution of midges among the test chambers shall be randomized. In addition, test chambers within the testing area are positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

(viii) A control sediment and/or a reference sediment shall be used in each part of this test. Use of these controls/references will help determine if the test is acceptable, serve to monitor the health of the chironomids used in the testing, monitor the quality and suitability of test conditions, parameters and procedures, and aid in analyzing data obtained from this test. A negative control shall be run in the test, and this is to be a sediment known to be non-toxic to the midges. Also, in addition to, or in place of the negative control, a reference sediment can be run in the test. The reference sediment is obtained from an area that is known to have low levels of chemical contamination and which is similar to or identical to the test sediments (in physical and chemical characteristics).

(ix) In the first part of this test, the aqueous exposure, a minimal amount of sediments (≦ 2mm) is placed in the test chambers. Sediments are necessary to reduce stress to the chironomids, cannibalism, and to allow the midges to construct tubes.

(x) BCFs shall be calculated at the end of each part of the test.

(5) [Reserved]

(6) *Analytical measurements* — (i) *Water quality analysis.* (A) The hardness, acidity, alkalinity, conductivity, total organic carbon (TOC) or chemical oxygen demand (COD), and particulate matter of the dilution water serving as the source of overlying water shall be measured on days 0 and 14. The month-to-month variation of these values should be less than 10 percent and the pH should vary less than 0.4 units.

(B) During all three parts of the flow-through test, DO, temperature, and pH shall be measured in each chamber on days 0, 4, 7, 10, and 14.

(ii) *Measurement of test substance.* (A) Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses of water and sediments. Radiolabeling of the test substance (e.g., by use of ^{14}C) may be necessary in order to accurately measure quantities present in the sediments. The analytical method used to measure the amount of test substance in the sample shall be validated by appropriate laboratory practices before beginning the test. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interference which cannot be systematically identified and corrected mathematically. When radiolabeled test substances are used, total radioactivity shall be measured in all samples. At the end of the test, water, sediments, and tissue samples should be analyzed using appropriate methodology to identify and estimate any major (at least 10 percent of the parent compound) degradation products or metabolites that may be present.

(B) For all three aqueous exposure parts of this test, the overlying water shall be sampled on days 0, 7, and 14 from each test chamber, for the test substance.

(C) For the non-aqueous exposure parts of the test, the interstitial water shall be sampled for the test substance on days 0, 7, and 14 from each test chamber. Interstitial water can be sampled by using a variety of methods, such as removal of overlying water and centrifugation, filtration of sediments, pressing the sediments, or using an interstitial water sampler. Care should be taken during these measurements to prevent the biodegradation, transformation, or volatilization of the test substance.

(D) For the non-aqueous exposure portion of the test, the sediments shall be sampled for the test substance on days 0, 7, and 14 from each test chamber.

(E) The sediment partition coefficient or soil-water partition coefficient is determined by dividing the average test substance sediment concentration by the respective average water column concentration. Concentrations of test substance in the sediments to be used in this test can be chosen by measuring these partition coefficients. This sediment partition coefficient should be determined in triplicate by placing a quantity of a sediment with a known TOC content spiked with the radiolabeled test substance into a quantity of dilution water. The ratio of sediment to dilution water should simulate the ratio present in the test. The sediment/dilution water mixture is periodically shaken, and the radiolabeled test substance is measured. This shaking and sampling procedure is repeated until equilibrium is reached, as defined by the stage of the desorption curve.

(F) Overlying water samples should be filtered through a 0.45 micron filter to determine the concentration of dissolved test substance.

(G) BCFs shall be calculated by determining the amount of test substance in the midge tissue divided by concentrations of test substance in the water column, interstitial water, and sediments. At test termination, the midges remaining in each test concentration are analyzed for test substance. Suitable methods are available, such as radiolabeling (^{14}C) the test substance, combusting the midges, and trapping and counting the resulting radioactivity, if other methods are unavailable. The BCF can then be calculated. If insufficient chironomid biomass is present at the conclusion of the test, then replicates may be pooled, if necessary. If this pooling still results in insufficient biomass or if the accumulated test substance concentration is lower than the

detection limit for the test substance, BCFs cannot be calculated.

(iii) *Numerical.* (A) The number of dead midge second instars shall be counted during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for mortality concentration-response curves calculated on days 4, 7, 10, and 14. A 4–, 7–, 10–, and 14–day LC50 value based on second instar mortality, and with corresponding 95 percent confidence intervals, shall be calculated. The methods recommended for calculating EC50's include probit, logit, binomial, and moving average.

(B) Appropriate statistical tests (e.g., analysis of variance and mean separation tests) should be used to test for significant chemical effects on growth (measured as wet weights) on days 4, 7, and 14. An MATC shall be calculated using these test criteria.

(C) In no case should any analytical measurements be pooled except when calculating BCFs and there is insufficient biomass available for individual measurements.

(d) *Test conditions*—(1) *Test species* — (i) *Selection.* (A) The midge, *Chironomus tentans* or *C. riparius* shall be used in this test. Both species are widely distributed throughout the United States, and the larvae and adult flies can be cultured in the laboratory. The larval portion of both species' life cycles is spent in a tunnel or case within the upper layers of benthic sediments of lakes, rivers, and estuaries. Feeding habits of both species include both filter feeding and ingesting sediment particles.

(B) Second instar chironomids (≦ 10 days) of the same age and size are to be used in this test. Third and fourth instar are less desirable, as some evidence indicates they are less sensitive, at least to copper. Each instar is 4 to 7 days in duration.

(ii) *Acquisition.* (A) Chironomids to be used in this test should be cultured at the test facility. Adult flies are collected from the chironomid cultures and allowed to mate and lay egg masses. Two egg masses are collected and allowed to hatch. The larvae are fed daily. When the second instar stage (about 10 days after hatching) is reached, larvae are removed and placed in the test chambers. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test shall have originated from the same population (culture container) and be the same in age and size.

(B) Chironomids shall not be used in a test if:

(*1*) During the final 48 hours of midge holding, obvious mortality is observed.

(*2*) The larvae are not in the second instar.

(iii) *Feeding.* (A) During the test, the chironomids should be fed the same diet and with the same frequency as that used for culturing and acclimation. All treatments and control(s) should receive, as near as reasonably possible, the same amount of food on a per-animal basis.

(B) The food concentration depends on the type used and the nutritional requirements of the midges. The latter in turn is dependent upon the stage of their development.

(iv) *Loading.* The number of test organisms placed in a test chamber should not affect the test results. Loading should not exceed 30 chironomids per liter per 24 hours in the flow-through test. Loading should not effect test concentrations or cause the DO concentration to fall below the recommended level.

(v) *Care and handling of test organisms.* (A) Chironomids should be cultured in dilution water under similar environmental conditions as those in the test. Food such as Tetra® Conditioning Food has been demonstrated to be adequate for chironomid cultures.

(B) Organisms should be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and as quickly as possible. During culturing and acclimation, midges should be observed for any signs of stress, physical damage, and mortality. Dead and abnormal individuals shall be discarded. Organisms that are damaged or dropped during handling shall be discarded.

(C) Wide-bore, smooth glass tubes or pipets equipped with a rubber bulb can be used for transferring midges.

(vi) *Acclimation.* (A) Midges shall be maintained in 100 percent dilution water at the test temperature for at least 4 days prior to the start of the test. This is easily accomplished by culturing them in the dilution water at the test temperature. Chironomids shall be fed the same food during the test as is used for culturing and acclimation.

(B) During culturing and acclimation to the dilution water, midges should be maintained in facilities similar to those of the testing area.

(2) *Facilities*—(i) *General.* (A) Facilities needed to perform this test include:

(*1*) Containers for culturing and acclimating the chironomids;

(*2*) A mechanism for controlling and maintaining the water temperature during the culturing, acclimation, and test periods;

(*3*) Apparatus for straining particulate matter, removing gas bubbles, or aerating the water as necessary to ensure that the test solution flows regularly into and out of the container. Test chambers can be small aquaria capable of holding 3 liters of water or test solution, 5.7 liter clear glass battery jars, or 1 liter beakers made of borosilicate glass. Each chamber should be equipped with screened overflow holes, standpipes, or u-shaped notches covered with Nitex screen. Construction materials and commercially purchased equipment that may contact dilution water should not contain substances that can be leaked or dissolved into aqueous solutions in quantities that can alter the test results. Materials and equipment that contact test solutions should be chosen to minimize sorption of test substances; and

(*4*) Test chambers should be loosely covered to reduce the loss of test solution or dilution water by evaporation, and to minimize the entry of dust or other particulates into the solutions.

(ii) *Test substance delivery system.* (A) In the flow-through test, proportional diluters, metering pump systems or other suitable systems should be used to deliver the test substance to the test chambers.

(B) The test substance delivery system used shall be calibrated before and after each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system shall be checked twice daily during the test. The 24–hour flow rate through a test chamber shall be equal to at least five times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent from any one test chamber to another or from one time to any other.

(iii) *Dilution water.* (A) Surface or ground water, reconstituted water, or dechlorinated tap water are acceptable as dilution water if chironomids will survive in it for the duration of the culturing, acclimation, and testing periods without showing signs of stress. The quality of the dilution water should be constant and should meet the specifications in the following Table 2:

TABLE 2.—SPECIFICATIONS FOR DILUTION WATER

Substance	Maximum Concentration
Particulate matter	20 mg/L
Total organic carbon (TOC) or chemical oxygen demand (COD).	2 mg/L or 5 mg/L, respectively

TABLE 2.—SPECIFICATIONS FOR DILUTION WATER—Continued

Substance	Maximum Concentration
Boron, fluoride	100 µg/L
Un-ionized ammonia	10 µg/L
Aluminum, arsenic, chromium, cobalt, copper, iron, lead, nickel, zinc.	1 µg/L
Residual chlorine	3 µg/L
Cadmium, mercury, silver	100 ng/L
Total organophosphorus pesticides.	50 ng/L
Total organochlorine pesticides and polychlorinated biphenyls (PCBs) or Organic chlorine.	50 ng/L or 25 ng/L, respectively

(B) The water quality characteristics listed in Table 2 of paragraph (b)(2)(iii)(A) of this section shall be measured at least twice a year or when it is suspected that these characteristics may have changed significantly. If dechlorinated tap water is used, daily chlorine analysis shall be performed.

(C) If the diluent water is from a ground or surface water source, conductivity, hardness, alkalinity, pH, acidity, particulate matter, TOC or COD, and particulate matter shall be measured. Reconstituted water can be made by adding specific amounts of reagent-grade chemicals to deionized or distilled water. Glass distilled or carbon filtered deionized water with conductivity of less than 1 microohm/cm is acceptable as the diluent for making reconstituted water.

(D) If the test substance is not soluble in water, an appropriate carrier such as triethylene glycol (CAS No. 112–27–6), dimethylformamide (CAS No. 68–12–2), or acetone (CAS No. 67–64–1) should be used. The concentration of such carriers should not exceed 0.1 mL/L.

(iv) *Cleaning of test system.* All test equipment and test chambers shall be cleaned before each test following standard laboratory procedures. Cleaning of test chambers may be necessary during the testing period.

(v) *Sediments.* (A) Sediments used in this test may contain low (< 1 percent) to high (>15 percent) amounts of organic carbon because they are derived from variable natural sediments. Prior to use, the sediments should be sieved to remove larger particles. They should be characterized for particle size distribution (sand, silt, clay percentages), percent water holding capacity, total organic and inorganic carbon, total volatile solids, COD, BOD, cation exchange capacity, redox potential (E_h), oils and greases, petroleum hydrocarbons, organophosphate pesticide concentrations, organochlorine pesticide [and polychlorinated biphenyl (PCB)] concentrations, toxic metal concentrations, and pH.

(B) The source of the sediments used in this test shall be known and the characteristics in paragraph (d)(2)(v)(A) of this section should be measured every time additional sediments are obtained. The sediments should not contain any endemic organisms, as these may be chironomid predators.

(C) Sediments should not be resuspended during the test.

(vi) *Sediment partition coefficient.* (A) The sediment or soil-water partition coefficient (K_p) is described as the ratio of the concentration of the test substance in the sediment (C_s) to the concentration in the water or interstitial water (C_w). This is expressed by the formula:

$$K_p = \frac{C_s}{C_w}$$

The resulting K_p values for the sediment or sediments tested are used to select test substance concentrations for the sediment test.

(B) The K_p value is equivalent or related to the sediment organic carbon sorption coefficient multiplied by the percent organic carbon content of the sediment.

(C) The sediment partition coefficient should be determined in triplicate for each sediment type at equilibrium by spiking with the radiolabeled test substance and shaking. Periodically, the test substance concentration in the water is measured radiometrically. The shaking and sampling is repeated until an equilibrium, as defined by the shape of the plotted desorption curve, is reached.

(vii) *Bioconcentration Factors.* BCFs shall be calculated for each part of the test. These values are computed as the amount of test substance present in the midge tissues divided by test substance concentrations in the water column, interstitial water, and sediments. At test termination, the chironomids remaining in each test concentration are analyzed for radiolabeled test substance.

(3) *Test parameters.* (i) Environmental conditions of the water contained in test chambers should be maintained as specified below:

(A) Temperature of 20 ± 1 °C for *C. tentans* and 22 ± 1 °C for *C. riparius.*

(B) DO concentration of the dilution water should be 90 percent of saturation or greater. The DO concentrations of the test solutions shall be 60 percent or greater of saturation, throughout the test. Aeration may be necessary, and if this is done, all treatment and control chambers should be given the same aeration treatment.

(C) A photoperiod of 16 hours light and 8 hours darkness with a 15 to 30 minute transition period.

(ii) Additional measurements include:

(A) The concentration of dissolved test substance (that which passes through a 0.45 micron filter) in the chambers should be measured during the test.

(B) At a minimum, the concentration of test substance should be measured as follows:

(*1*) In each chamber before the test.

(*2*) In each chamber on days 7 and 14 of the test.

(*3*) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system.

(C) Among replicate test chambers of a treatment concentration, the measured concentration of the test substance shall not vary by more than 20 percent at any time or 30 percent during the test.

(D) The dissolved oxygen concentration, temperature and pH shall be measured at the beginning of the test and on days 7 and 14 in each chamber.

(e) *Reporting.* The sponsor shall submit to the USEPA all data developed by the test that are suggestive and predictive of toxicity and all associated toxicologic manifestations. In addition to the reporting requirements prescribed in the GLPS (40 CFR part 792), the reporting of test data shall include the following:

(1) The name of the test, sponsor, testing laboratory, study director, principal investigator, and dates of testing.

(2) A detailed description of the test substance including its source, lot number, composition (identity and concentration of major ingredients and major impurities), known physical and chemical properties, and any carriers or other additives used and their concentrations.

(3) The source of the dilution water, its chemical characteristics (e.g., conductivity, hardness, pH, TOC or COD, and particulate matter) and a description of any pretreatment.

(4) The source of the sediment, its physical and chemical characteristics (e.g., particle size distribution, TOC, pesticide and metal concentrations), and a description of any pretreatment.

(5) Detailed information about the chironomids used as a stock, including the scientific name and method of verification, age, source, treatments, feeding history, acclimation procedures, and culture methods. The age (in days) and instar stage of the midges used in the test shall be reported.

(6) A description of the test chambers, the volume of solution in the chambers, and the way the test was begun (e.g., conditioning and test substance additions). The number of test organisms per test chamber, the number of replicates per treatment, the lighting, the test substance delivery system, flow rates expressed as volume additions per 24 hours for the flow-through sub-chronic test, the method of feeding (manual or continuous), and type and amount of food.

(7) The concentration of the test substance in the water, interstitial water, and sediments in test chambers at times designated in the flow-through tests.

(8) The number and percentage of organisms that show any adverse effect in each test chamber at each observation period, and wet weights of midges in each test chamber at days 7 and 14.

(9) BCFs for all three parts of the test (i.e., overlying water or water column, sediment, and interstitial water modes of exposure).

(10) All chemical analyses of water quality and test substance concentrations, including methods, method validations and reagent blanks.

(11) The data records of the culture, acclimation, and test temperatures. Information relating to calculation of sediment (or soil-water) partition coefficients (K_p).

(12) Any deviation from this test guideline, and anything unusual about the test (e.g., diluter failure and temperature fluctuations).

(13) An LC50 value based on mortality and an EC50 value based on adverse effects on growth (wet weights), with corresponding 95 percent confidence limits, when sufficient data are present for days 4, 7, and 14. These calculations should be made using the average measured concentration of the test substance.

(14) Concentration-response curves utilizing the average measured test substance concentration should be fitted to both number of midges that show adverse effects (mortality) and effects on growth or wet weights of midges at days 4, 7 and 14. A statistical test of goodness-of-fit should be performed and the results reported.

(15) The MATC to be reported is calculated as the geometric mean between the lowest measured test substance concentration that had significant ($P < 0.05$) effect and the highest measured test substance concentration that had no significant ($P > 0.05$) effect on days 4, 7, and 14 of the test. The criterion selected for MATC computation is the one which exhibits an effect (a statistically significant difference between treatment and control groups; $P < 0.05$) at the lowest test substance concentration for the shortest period of exposure. Appropriate statistical tests (analysis of variance and mean separation tests) should be used to test for significant test substance effects. The statistical tests employed and the results of these tests should be reported.

(f) *References.* For further background information on this test guideline the following references should be consulted:

(1) Adams, W. J., Kimerle, R. A., Mosher, R. G. "Aquatic safety assessment of chemicals sorbed to sediments." R. D. Cardwell, R. Purdy, and R. C. Bahner, eds. In: *Aquatic Toxicology and Hazard Assessment.* ASTM STP 854. American Society for Testing and Materials. (1985).

(2) Nebeker, A. V., Cairns, M. A., Wise, C. M. "Relative sensitivity of *Chironomus tentans* life stages to copper." *Environmental Toxicology and Chemistry* 3:151 158. (1984).

(3) Nebeker, A. V., Cairns, M. A., Gakstatter, J. H., Malueg, K. W., Schuytema, G. S., Krawczyk, D. F. "Biological methods for determining toxicity of contaminated freshwater sediments to invertebrates." *Environmental Toxicology and Chemistry* 3:617–630. (1984).

c. By adding § 795.150 to read as follows:

§ 795.150 Earthworm toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 et seq.). The guideline sets forth the procedures and conditions for conducting this toxicity test. The U.S. Environmental Protection Agency (EPA) will use data from this test in assessing the hazard of a chemical to earthworms in the soil environment.

(b) *Definitions.* The definitions in section 3 of TSCA and the definitions in "Good Laboratory Practice Standards" (GLPS) (40 CFR part 792) apply to this guideline. The following definitions also apply:

Artificial soil means a defined dry weight mixture of 68 percent of No. 70 mesh silica sand, 20 percent kaolin clay, 10 percent sphagnum peat moss, and 2 percent calcium carbonate. These ingredients are weighed and mixed in the above proportions and moistened to 35 percent (by weight) with deionized/distilled water.

Behavioral symptoms are indicators of toxicity to earthworms such that a distinct difference in position in the test container can be identified, e.g., below surface or on the surface; writhing on the surface; stiffened and shortened on the surface or elongated and pulsing; or inactive below surface in a ball.

Clitellum means a glandular portion of the anterior epidermis, appearing as saddle-shaped or annular, usually differentiated externally by color.

Culture means the animals which are raised on-site or maintained under controlled conditions to produce test organisms through reproduction.

EC50 means that test substance concentration calculated from experimentally-derived growth or sublethal effects data that has affected 50 percent of a test population during continuous exposure over a specified period of time.

LC50 means that experimentally derived concentration of test substance that is estimated to kill 50 percent of a test population during continuous exposure over a specified period of time.

Lowest observed effect concentration (LOEC) means the lowest treatment (i.e., test concentration) of a test substance that is statistically different in adverse effect on a specific population of test organisms from that observed in controls.

Mature or adult worms means a condition of the worm exhibiting a clitellum in the anterior 1/3 of the body.

Mortality means the lack of movement by the test organism in response to a definite tactile stimulus to the anterior end. Also, because earthworms tend to disintegrate rapidly after death, the absence of organisms in the enclosed soil test container is considered to mean death has occurred

No observed effect concentration (NOEC) means the highest treatment (i.e., test concentration) of a test substance that shows no statistical difference in adverse effect on a specific population of test organisms from that observed in controls.

Pathological symptoms means toxic effects, such as surface lesions and mid-segmental swellings or general ulcerated areas on the surface of the earthworm.

Test mixture means the test substance/artificial soil mixtures which the earthworms are exposed to during the test.

Test substance means any compound used in artificial soils spiked for laboratory testing of toxicity.

(c) *Test procedures*—(1) *Summary of the test.* (i) Test chambers are filled with appropriate amounts of test mixtures.

(ii) This toxicity test may be done by placing earthworms in test chambers containing test mixtures and allowing earthworms to ingest this test mixture soil ad libitum.

(iii) Acclimated earthworms are introduced into the test and control chambers by stratified random assignment.

(iv) Earthworms in the test and control chambers shall be observed every 7 days and the findings shall be recorded and dead earthworms removed.

(v) The pH, temperature, and the concentration of the test mixtures shall be measured at 7 day intervals in each test chamber.

(vi) Initial weight of earthworm shall be between 300 to 600 grams per container.

(vii) Concentration-response curves, LC50, EC50, LOEC, NOEC values, and 95 percent confidence intervals for the test substance are developed from the data collected during the test.

(2) [Reserved]

(3) *Range-finding test.* (i) If the toxicity of the test substance is not already known, a range-finding test should be performed to determine the range of concentrations to be used in the definitive test.

(ii) The earthworms should be exposed (for at least 28 days) to a range of concentrations of the test substance (e. g., 0.1, 1.0, 10, 100, 1,000 mg/kg dry weight artificial soil).

(iii) Nominal concentrations are acceptable and no replication is required. If the LC50 value is > 1,000 mg test substance (100 percent active ingredient) per kiligram dry weight of artificial soil, the definitive test does not have to be done.

(4) *Definitive test.* (i) This test is designed to determine a concentration-mortality curve at 28 days and estimate the respective LC50, EC50, LOEC, NOEC values and 95 percent confidence intervals.

(ii) If data permit, the concentration-response curves, LC50, EC50, LOEC, NOEC values, and 95 percent confidence interval also should be determined for 7, 14, and 21 days.

(iii) This toxicity test uses earthworms which are maintained in direct contact with an artificial soil allowing earthworms to ingest contaminated soil ad libitum.

(iv) A minimum of 30 earthworms exposed to each of 5 or more test concentrations and a control shall be tested.

(v) Test concentrations should be chosen in a geometric series in which the ratio is between 1.5 and 2.0 mg/kg (e.g., 2, 4, 8, 16, 32, and 64 mg/kg). All test concentrations shall be based on milligram of test chemical (100 percent active ingredient) per kiligram of artificial soil (air-dry weight).

(vi) Ten earthworms per container of 200 g (dry weight) artificial soil shall be placed in three replicates for each concentration and control. The distribution of individual earthworms among the test chambers shall be randomized. Test concentrations in artificial soil shall be analyzed for test chemical concentrations prior to the start of the test and at days 7, 14, 21, and 28 as a minimum.

(vii) The living earthworms should be placed on the surface of the medium and the jar capped and secured without making an airtight seal.

(viii) Any changes in soil temperature should not exceed 3 °C per day or 1 °C per hour. Earthworms should be held for a minimum of 7 days at the test temperature prior to testing.

(ix) Every test shall include a negative control consisting of uncontaminated artificial soil, conditions, procedures, and earthworms from the same group used in the definitive test as shown, except that none of the test substance is added.

(x) The test duration is 28 days.

(5) *Test results.* (i) Death is the primary criterion used in this test guideline to evaluate the toxicity of the test substance.

(ii) In addition to death, weight loss, behavioral symptoms and pathological symptoms shall be recorded.

(iii) Each test and control chamber shall be checked for dead or affected earthworms and observations recorded 7, 14, 21, and 28 days after the beginning of the test or within 1 hour of the designated times. Missing earthworms shall be considered to have died.

(iv) Mortality is assessed by emptying the test medium on a glass or other inert surface, sorting earthworms from the test mixture and testing their reaction to a gentle mechanical stimulus. Any adverse effects (e.g., weight loss, behavioral or pathological symptoms) are noted and shall be reported. The medium is returned to each container.

(v) The 28–day test result shall be unacceptable if:

(A) More than 20 percent of control organisms die; or

(B) The total mean weight of the earthworms in the control containers declines significantly during the test (i.e, by 30 percent).

(vi) Mortality is checked and recorded at days 7, 14, 21, and 28.

(vii) The mortality data shall be used to calculate LC50 values and their 95 percent confidence limits, and to plot concentration-response curves at days 7, 14, 21, and 28.

(viii) The sublethal effects and growth (i.e., fresh weight) data shall be used to plot concentration-response curves, calculate EC50 values, and determine LOEC and NOEC values. Appropriate statistical methods (e.g., one-way analysis of variance and multiple comparison test) should be used to test for significant differences between treatment means and determine LOEC and NOEC.

(6) *Analytical measurements*— (i) *Artificial soil analysis.* During the test, the temperature and pH shall be measured in the artificial soil at the beginning of the test (0–hour), and every 7 days thereafter.

(ii) *Measurement of test substance.* (A) The concentration of test substance in artificial soil shall be measured at a minimum in each test chamber at the beginning (0–hour, before earthworms are added) and every 7 days thereafter.

(B) The analytical methods used to measure the amount of test substance in a sample should be validated before beginning the test. The accuracy of a method should be verified by a method such as using known additions. This involves adding a known amount of the test substance to three samples of artificial soil taken from the test chamber and the same number of earthworms as are used in the test. The measured concentration of the test substance in those samples should span the concentration range to be used in the test. Validation of the analytical method should be performed on at least two separate days prior to starting the test.

(C) An analytical method is not acceptable if likely degradation products of the test substance give positive or negative interferences, unless it is shown that such degradation

products are not present in the test chambers during the test.

(D) In addition to analyzing samples of artificial soil, at least one reagent blank, containing all reagents used, should also be analyzed.

(E) The measured concentration of the test substance in artificial soil in any chamber during the test should not vary more than 50 percent from the measured concentration prior to initiation of the test; concentration measurements should be as described by Neuhauser et al., in paragraphs (f)(5) and (f)(6) of this section, or an equivalent method.

(F) The mean measured concentration of test substance in artificial soil (dry weight) should be used to plot all concentration-response curves and to calculate all LC50, EC50, LOEC, and NOEC values.

(G) The total carbon (TC) shall be determined as measured by the method of Plumb described in paragraph (f)(7) of this section, or an equivalent method.

(iii) *Numerical.* The statistical methods recommended for use in calculating the LC50 and EC50 values include probit, logit, moving average, and binomial.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* The test species for this test is the earthworm *Eisenia fetida andrei* (Bouche). The species identity of the test organism should be verified using appropriate taxonomic keys as described by Fender in paragraph (f)(2) of this section, or an equivalent method.

(ii) *Age and condition of earthworms.* (A) Adult earthworms, 300–600 mg, are to be used to start the test.

(B) Earthworms used in toxicity tests should be purchased from a commercial source that can verify the species. Once verified, cultures should be maintained at the test facility. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test should have originated from the same population (culture).

(C) All newly acquired earthworms should be quarantined and observed for at least 14 days prior to use in a test.

(D) Earthworms should not be used if they have been under stress from too much or a lack of moisture as described by Reinecke and Venter in paragraph (f)(8) of this section, or an equivalent method; excessive or inadequate food or temperature as described by Tomlin and Miller in paragraph (f)(11) of this section, or an equivalent method; pH variation as described by Satchell and Dottie in paragraph (f)(9) of this section, or an equivalent method; or crowding. Any of these conditions will produce earthworms that may not be healthy.

(iii) *Preparation.* Sufficient numbers of earthworms should be harvested and sorted to insure that healthy individuals are used for the test. Any animals that appear to be injured shall not be used in the test and must be discarded.

(iv) *Acclimation of test earthworms.* Adult earthworms should be handled with care. Earthworms should be held for a minimum of 7 days in uncontaminated soil at the test temperature prior to testing.

(v) *Feeding.* (A) Substrate food for culturing *Eisenia fetida andrei* should be saturated (water) alfalfa (*Medicago sativa*) pellets.

(B) The earthworms are not fed during the test period.

(2) *Facilities*—(i) *General.* Facilities needed to perform this test include:

(A) Apparatus for providing continuous lighting.

(B) Chambers for exposing test earthworms to the test substance.

(C) A mechanism for controlling and maintaining the artificial soil temperature and relative humidity during the holding, acclimation, and test periods.

(ii) *Construction materials.* (A) Construction materials and equipment that contact test mixtures shall not contain substances that can be leached or dissolved into artificial soil in quantities that can affect the test results. Material and equipment that contact test mixtures shall be chosen to minimize sorption of test substances. Hard glass jars are preferable and should be heated in an ashing oven between tests; soft glass jars shall be used only once.

(B) Polyethylene containers (rectangular dish pans measuring 32.5 X 27.5 X 12.5 cm) for culturing earthworms, a mechanism (e.g., environmental chamber) for maintaining temperature and relative humidity of the cultures during culturing, and separate facilities for testing are required.

(C) Testing containers (eg. 1 pint glass canning jars) and lids, and suitable balances to measure soil mixtures and sample weights shall also be used.

(D) Relative humidity should be maintained above 85 percent. An open pan of water can be used for this purpose to prevent moisture loss from the containers.

(iii) *Test chambers.* (A) One-pint (1-pt) glass canning jars or their equivalent should be used for testing.

(B) The lids should be reversed (i.e., turned upside down), loosely capped and secured without making an airtight seal to reduce evaporation and permit air exchange.

(iv) *Cleaning of test system.* The test chambers should be cleaned before each test following standard laboratory procedures. If soft glass is to be used it must only be used once and then thrown away.

(v) *Medium preparation.* (A) For each concentration tested and controls, enough artificial soil must be prepared by recipe to yield 270 g of artificial soil (wet weight) per replicate. A dry weight mixture of 68 percent of No. 70 mesh silica sand, 20 percent kaolin clay, and 10 percent sphagnum peat moss are mixed until evenly distributed.

(B) Up to 2 percent pulverized calcium carbonate may be added to adjust the soil pH to 6.5 ± 0.5.

(C) An appropriate amount of high purity water (e.g., 70 g per 200 g of dry soil) is added to the artificial soil and mixed with the artificial soil to raise the artificial soil moisture level to 35 percent by weight to yield a total weight of 810 g artificial soil at 35 percent moisture.

(D) Appropriate portions of the artificial soil are mixed thoroughly with appropriate amounts of test substance to yield three replicates for each test concentration. Each test mixture is divided into three equal quantities of about 270 g as determined by weight. Each portion is placed into a separate 1 pint jar and represents one replicate for exposing 10 earthworms at the same concentration. Three replicates for negative and, if necessary, solvent controls are prepared from untreated portions of the artificial soil mixture.

(E) If a solvent is used, the opened chambers are placed in a hood for 24 hours to evaporate the solvent prior to adding the earthworms.

(F) Prior to the addition of earthworms, a 10-g sample shall be removed from each replicate to measure pH and test concentrations.

(3) *Test parameters*— (i) *Loading.* The number of earthworms placed in a test chamber should not be so great as to affect the results of the test. The weight of the individual earthworms should be between 300 mg and 600 mg each. The earthworms are selected from the culture randomly into groups of 10. These groups are then randomly assigned to the test containers and then weighed such that they do not differ more than ± 10 percent among the replicates.

(ii) *Temperature.* (A) The test soil temperature shall be 22 ± 2 °C. as described by Edwards in paragraph (f, (1) of this section, or using an equivalent method.

(B) Temperature shall be measured and reported at the beginning of the test and on days 7, 14, 21, and 28. The temperature should be measured at least hourly in one test container.

(iii) *Light.* (A) Replicates shall be illuminated continuously with incandescent or fluorescent lights as described by Edwards in paragraph (f)(1) of this section, or using an equivalent method.

(B) Light intensity shall be about 400 lux measured at the artificial soil surface.

(C) Light intensity shall be measured at least once during the test at the surface of the container and checked weekly in the test chambers.

(e) *Reporting.* (1) The sponsor shall submit all data developed by the test that are suggestive or predictive of toxicity and all concomitant gross toxicological manifestations. The reporting of test data shall include the following information:

(i) Test Background including the name of the sponsor, testing laboratory, principal investigator, and dates of testing.

(ii) A detailed description of the test chemical including its chemical identification (CAS No., trade name, common name,) source, lot number, composition (identity and concentration or major ingredients and major impurities), known physical and chemical properties, empirical formula, water solubility, vapor pressure, manufacturer, method of application, and any carriers or other additives used and their concentrations. The volume or mass of any carriers should be reported. An exact description of how the test substance has been mixed into the artificial soil.

(iii) Detailed information about the earthworms used as brood stock, including the scientific name and method of verification, age, source, treatments, feeding history, and culture method.

(iv) A description of the test situation, especially if there was a deviation from this test guideline as described above in soil preparation (paragraph (d)(2)(v)(A) of this section), addition of the chemical, culturing of the test species, lighting, pH, temperature, replicates, or the number of organisms per container.

(v) A description of the test container used, its size, volume and weight of soil used in each container, number of test organisms per container, number of test containers per concentration, conditioning of the test container, description of the method of test chemical introduction into the test medium (e.g., as a powder), stock solution used or not, and time between mixing of the stock solution and introduction of the earthworms.

(vi) The concentrations in artificial soil at the beginning of the test and the actual concentrations of the test chemical (if measured) in the soil before (day 0), during (day 7, 14, 21) and upon the conclusion of the test (day 28) and the dates the analyses were performed.

(vii) The total organic carbon (TOC) of the soil mixture.

(2) The reported results shall include:

(i) The number and percentage of organisms that were killed or showed any adverse effects at each test concentration, including controls, in each test jar at each observation period.

(ii) Concentration response curves fitted to mortality data at 7, 14, 21, and 28–day periods. A statistical test of goodness-of-fit shall be performed and reported.

(iii) The LC50/EC50 values and the 95 percent confidence limits using the mean measured test concentration and the methods used to calculate both the LC50/EC50; also the LOEC and NOEC values and the confidence intervals by the Trimmed Spearman-Karber method as described by Hamilton et al., in paragraph (f)(3) of this section, or an equivalent method. The probit technique should follow the methods described by Weber et al., in paragraph (f) (12) of this section, or an equivalent method. Appropriate statistical methods (e.g., one-way analysis of variance and multiple comparison test) should be used to test for significant differences between treatment and determine the LOEC and NOEC.

(iv) All chemical analyses of test material including methods, method validations, and reagent blanks.

(v) The data records for the culture and lighting.

(vi) Moisture content for the test mixture at start of test.

(vii) The pH and temperature values at start of test and on days 7, 14, 21, and 28 of the test.

(viii) Any deviation from this test guideline and anything unusual about the test (e.g., equipment failure, fluctuations in temperature, pH, or other environmental conditions).

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Edwards, C. A. "Report of the second stage in development of a standardized laboratory method for assessing the toxicity of chemical substances to earthworms," The Artificial Soil Test. DG X1/AL/82/43, Revision 4 (1984).

(2) Fender, W. M. "Earthworms of the Western United States," Part 1. Lumbricidae, *Megadrilogica*, 4: 93–129 (1985).

(3) Hamilton, M. A., Russo, R. C., and Thurston, R. V. "Trimmed Spearman-Karber method for estimating median lethal concentrations in toxicity bioassays," *Environmental Science and Toxicology* 11 (7): 714–717 (1977). Correction: Ibid 12: 417 (1978).

(4) Hartenstein, R., Neuhauser, E. F., and Kaplan, D. L. "Reproductive potential of the earthworm *Eisenia foetida*.", 43: *Oecologia*, 329–340 (1979).

(5) Neuhauser, E. F., Loehr, R. C., and Malecki, M. R. "Contact and artificial soil tests using earthworms to evaluate the impact of wastes in soils," In: Hazardous and Industrial Solid Waste Testing: Fourth Symposium, ASTM STP 886. J.K. Petros, Jr. and R. A. Conway, eds., (American Society for Testing and Materials. Philadelphia, PA. 1986) pp. 192–203.

(6) Neuhauser, E. F., Loehr, R. C., Malecki, M. R., Milligan, D. L., Durkin, P. R. "The toxicity of selected organic chemicals to the earthworm *Eisenia fetida.*" *Journal of Environmental Quality*, 14: 383–388 (1985).

(7) Plumb, R.H., Jr. Procedures for handling and chemical analysis of sediment and water samples. Technical Report EPA/CE–81–1, prepared by Great Lakes Labroratory, State University College at Buffalo, Buffalo, NY., for the U.S. Environmental Protection Agency/ Corp of Engineers Technical Committee on Criteria for Dredged and Fill Material. U.S. Army Engineer Waterways Experiment Station, CE, Vicksburg, MS. (1981)

(8) Reinecke, A.J. and Venter, J. M. "Moisture preferences, growth and reproduction of the compost worm *Eisenia fetida* (Oligochaeta)," *Biology of Fertilty Soils*, 3: 135–141 (1987).

(9) Satchell, J.E. and Dottie, D. J. "Factors affecting the longevity of earthworms stored in peat," *Journal of Applied Ecology*, 21: 285–291 (1984).

(10) Stafford, E. A. and Edwards, C. A. "Comparison of heavy metal uptake by *Eisenia foetida* with that of other common earthworms", Final Technical Report. Entomology Department, Rothamsted Experiment Station, Harpenten, Herts. ALS 2JQ, U.K. U.S. Army Contract DAJA 45–84–0027 (1985).

(11) Tomlin, A. D. and Miller, J. J. "Development and fecundity of the manure worm, *Eisenia foetida* (Annelida:Lumbricidae), under laboratory conditions." In: D.L.Dindal (ed.), "Soil Biology as Related to Land Use Practices." Proc. 7th Internat. Soil Zool. Coll. of ISSS. EPA, Washington, DC., pp 673–678 (1980).

(12) Weber, C. I., Horning, W. B., II, Klemm, D. J., Neiheisel, T. W., Lewis, P. A., Robinson, E. L., Menkedick, J. R., Kessler, F. A. "Short-term methods for estimating the chronic toxicity of effluents and surface waters to marine

and freshwater organisms," 2nd Edition, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH (600/4–87/028) (1988).

2. In part 798

PART 798 — [AMENDED]

a. By revising the authority citation for part 798 to read as follows:

Authority: 15 U.S.C. 2601, 2603

b. By revising § 798.3320 to read as follows:

§ 798.3320 Combined chronic toxicity/oncogenicity.

(a) *Purpose.* The objective of a combined chronic toxicity/oncogenicity study is to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. The application of this guideline shall generate data which identify the majority of chronic and oncogenic effects and determine dose-response relationships. The design and conduct shall allow for the detection of neoplastic effects and a determination of oncogenic potential as well as general toxicity, including neurological, physiological, biochemical, and hematological effects and exposure-related morphological (pathology) effects.

(b) *Test procedures)*—(1) *Animal selection*—(i) *Species and strain.* Preliminary studies providing data on acute, subchronic, and metabolic responses shall have been carried out to permit an appropriate choice of animals (species and strain). As discussed in other guidelines, the mouse and rat have been most widely used for assessment of oncogenic potential, while the rat and dog have been most often studied for chronic toxicity. The rat is the species of choice for combined chronic toxicity and oncogenicity studies. The provisions of this guideline are designed primarily for use with the rat as the test species. If other species are used, the tester shall provide justification/reasoning for their selection. The strain selected shall be susceptible to the oncogenic or toxic effect of the class of substances being tested, if known, and provided it does not have a spontaneous background too high for meaningful assessment. Commonly used laboratory strains shall be employed.

(ii) *Age.* (A) Dosing of rats shall begin as soon as possible after weaning, ideally before the rats are 6 weeks old, but in no case more than 8 weeks old.

(B) At commencement of the study, the weight variation of animals used shall not exceed ± 20 percent of the mean weight for each sex.

(C) Studies using prenatal or neonatal animals may be recommended under special conditions.

(iii) *Sex.* (A) Equal numbers of animals of each sex shall be used at each dose level.

(B) The females shall be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 100 rodents (50 females and 50 males) shall be used at each dose level and concurrent control for those groups not intended for early sacrifice. At least 40 rodents (20 females and 20 males) shall be used for satellite dose group(s) and the satellite control group. The purpose of the satellite group is to allow for the evaluation of pathology other than neoplasia.

(B) If interim sacrifices are planned, the number of animals shall be increased by the number of animals scheduled to be sacrificed during the course of the study.

(C) The number of animals at the termination of each phase of the study should be adequate for a meaningful and valid statistical evaluation of long term exposure. For a valid interpretation of negative results, it is essential that survival in all groups not fall below 50 percent at the time of termination.

(2) *Control groups.* (i) A concurrent control group (50 females and 50 males) and a satellite control group (20 females and 20 males) are recommended. These groups shall be untreated or sham treated control groups or, if a vehicle is used in administering the test substance, vehicle control groups. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended. Animals in the satellite control group shall be sacrificed at the same time the satellite test group is terminated.

(ii) In special circumstances such as inhalation studies involving aerosols or the use of an emulsifier of uncharacterized biological activity in oral studies, a concurrent negative control group shall be utilized. The negative control group shall be treated in the same manner as all other test animals, except that this control group shall not be exposed to the test substance or any vehicle.

(iii) The use of historical control data (i.e., the incidence of tumors and other suspect lesions normally occurring under the same laboratory conditions and in the same strain of animals employed in the test) is desirable for assessing the significance of changes observed in exposed animals.

(3) *Dose levels and dose selection.* (i) For risk assessment purposes, at least three dose levels shall be used, in addition to the concurrent control group. Dose levels should be spaced to produce a gradation of effects.

(ii) The highest dose level in rodents should elicit signs of toxicity without substantially altering the normal life span by effects other than tumors.

(iii) The lowest dose level should produce no evidence of toxicity. However, where there is a usable estimation of human exposure, the lowest dose level should exceed this even though this dose level may result in some signs of toxicity.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used the dose levels should be spaced to produce a gradation of toxic effects.

(v) For rodents, the incidence of fatalities in low and intermediate dose groups and in the controls should be low to permit a meaningful evaluation of the results.

(vi) For chronic toxicological assessment, a high dose treated satellite and a concurrent control satellite group shall be included in the study design. The highest dose for satellite animals should be chosen so as to produce frank toxicity, but not excessive lethality, in order to elucidate a chronic toxicological profile of the test substance. If more than one dose level is selected for satellite dose groups, the doses should be spaced to produce a gradation of toxic effects.

(4) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7 day per week basis over a period of at least 24 months for rats, and 18 months for mice and hamsters, except for the animals in the satellite groups which shall be dosed for 12 months.

(5) *Observation period.* It is necessary that the duration of the oncogenicity test comprise the majority of the normal life span of the animals to be used. It has been suggested that the duration of the study should be for the entire lifetime of all animals. However, a few animals may greatly exceed the average lifetime and the duration of the study may be unnecessarily extended and complicate the conduct and evaluation of the study. Rather, a finite period covering the majority of the expected life span of the strain is preferred since the probability is high that, for the great majority of chemicals, any induced tumors will occur within such an observation period The following guidelines are recommended:

(i) Generally, the termination of the study shall be at 18 months for mice and hamsters and 24 months for rats; however, for certain strains of animals

with greater longevity and/or low spontaneous tumor rate, termination shall be at 24 months for mice and hamsters and at 30 months for rats. For longer time periods, and where any other species are used, consultation with the Agency in regard to duration of the test is advised.

(ii) However, termination of the study is acceptable when the number of survivors of the lower doses or of the control group reaches 25 percent. In the case where only the high dose group dies prematurely for obvious reasons of toxicity, this shall not trigger termination of the study.

(iii) The satellite groups and the concurrent satellite control group shall be retained in the study for at least 12 months. These groups shall be scheduled for sacrifice for an estimation of test-substance-related pathology uncomplicated by geriatric changes.

(6) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* (A) The animals shall receive the test substance in their diet, dissolved in drinking water, or given by gavage or capsule for a period of at least 24 months for rats and 18 months for mice and hamsters.

(B) If the test substance is administered in the drinking water, or mixed in the diet, exposure shall be continuous.

(C) For a diet mixture, the highest concentration should not exceed 5 percent.

(ii) *Dermal studies.* (A) The animals are treated by topical application with the test substance, ideally for at least 6 hours per day.

(B) Fur should be clipped from the dorsal area of the trunk of the test animals. Care should be taken to avoid abrading the skin which could alter its permeability.

(C) The test substance shall be applied uniformly over a shaved area which is approximately 10 percent of the total body surface area. With highly toxic substances, the surface area covered may be less, but as much of the area as possible shall be covered with as thin and uniform a film as possible.

(D) During the exposure period, the test substance may be held, if necessary, in contact with the skin with a porous gauze dressing and nonirritating tape. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance.

(iii) *Inhalation studies.* (A) The animals shall be tested with inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour and to ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule, to ensure stability of a chamber atmosphere, the total "volume" of the test animals shall not exceed 5 percent of the volume of the test chamber. Alternatively, oronasal, head only, or whole body individual chamber exposure may be used.

(B) The temperature at which the test is performed should be maintained at 22 °C (± 2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(C) Food and water shall be withheld during each daily 6-hour exposure period.

(D) A dynamic inhalation system with a suitable analytical concentration control system shall be used. The rate of air flow shall be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(7) *Observation of animals.* (i) Each animal shall be handled and its physical condition appraised at least once each day.

(ii) Additional observations shall be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Clinical signs and mortality should be recorded for all animals. Special attention shall be paid to tumor development. The time of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor shall be recorded.

(iv) Body weights shall be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every 4 weeks thereafter, unless signs of clinical toxicity suggest more frequent weighings to facilitate monitoring of health status.

(v) When the test substance is administered in the food or drinking water, measurements of food or water consumption, respectively, shall be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals unless health status or body weight changes dictate otherwise.

(vi) At the end of the study period, all survivors are sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(8) *Physical measurements.* For inhalation studies, measurements or monitoring should be made of the following:

(i) The rate of airflow shall be monitored continuously, but shall be recorded at intervals of at least once every 30 minutes.

(ii) During each exposure period the actual concentrations of the test substance shall be held as constant as practicable, monitored continuously and recorded at least three times during the test period: At the beginning, at an intermediate time and at the end of the period.

(iii) During the development of the generating system, particle size analysis shall be performed to establish the stability of aerosol concentrations. During exposure, analyses shall be conducted as often as necessary to determine the consistency of particle size distribution and homogeneity of the exposure stream.

(iv) Temperature and humidity shall be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(9) *Clinical examinations.* (i) The following examinations shall be made on at least 20 rodents of each sex per dose level:

(A) Certain hematology determinations (e.g., hemoglobin content, packed cell volume, total red blood cells, total white blood cells; platelets, or other measures of clotting potential) shall be performed at termination and shall be performed at 3 months, 6 months and at approximately 6 month intervals thereafter (for those groups on test for longer than 12 months) on blood samples collected from 20 rodents per sex of all groups. These collections shall be from the same animals at each interval. If clinical observations suggest a deterioration in health of the animals during the study, a differential blood count of the affected animals shall be performed. A differential blood count shall be performed on samples from animals in the highest dosage group and the controls. Differential blood counts shall be performed for the next lower group(s) if there is a major discrepancy between the highest group and the controls. If hematological effects were noted in the

subchronic test, hematological testing shall be performed at 3, 6, 12, 18 and 24 months for a two–year study.

(B) Certain clinical biochemistry determinations on blood shall be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), near the middle and at the end of the test period. Blood samples shall be drawn for clinical measurements from at least 10 rodents per sex of all groups; if possible, these shall be from the same rodents at each time interval. Test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity. Suggested chemical determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, blood urea nitrogen, albumen, creatinine phosphokinase, total cholesterol, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation of observed effects.

(ii) The following shall be performed on at least 10 rodents of each sex per dose level:

(A) Urine samples from the same rodents at the same intervals as the hematological examination in paragraph (c)(9)(i)(A) of this section, shall be collected for analysis. The following determinations shall be made from either individual animals or on a pooled sample/sex/group for rodents: appearance (volume and specific gravity), protein, glucose, ketones, bilirubin, occult blood (semi-quantitatively) and microscopy of sediment (semi-quantitatively).

(B) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected, all animals shall be examined.

(10) *Gross necropsy.* (i) A complete gross examination shall be performed on all animals, including those which died during the experiment or were killed in moribund conditions.

(ii) The liver, kidneys, adrenals, brain and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. For these organs, at least 10 rodents per sex per group shall be weighed.

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions and tumors; brain—including sections of medulla/pons, cerebellar cortex, and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum and/or femur with bone marrow; salivary glands; liver; spleen; kidneys, adrenal; esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph nodes; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and if present, seminal vesicles); female mammary gland; aorta; gall bladder (if present); skin; musculature; peripheral nerve; spinal cord at three levels—cervical, midthoracic, and lumbar; and eyes. In inhalation studies, the entire respiratory tract, including nose, pharynx, larynx and paranasal sinuses shall be examined and preserved. In dermal studies, skin from sites of skin painting shall be examined and preserved.

(iv) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is considered essential for appropriate and valid histopathological examination.

(v) If other clinical examinations are carried out, the information obtained from these procedures shall be available before microscopic examination, since they may provide significant guidance to the pathologist.

(11) *Histopathology.* (i) The following histopathology shall be performed:

(A) Full histopathology on the organs and tissues, listed in paragraph (b)(10)(i) through (b)(10)(iii) of this section, of all non-rodents, of all rodents in the control and high dose groups and of all rodents that died or were killed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(D) Lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents shall be made for evidence of infection since this provides an assessment of the state of health of the animals.

(ii) If excessive early deaths or other problems occur in the high dose group compromising the significance of the data, the next dose level shall be examined for complete histopathology.

(iii) In case the results of the experiment give evidence of substantial alteration of the animals' normal longevity or the induction of effects that might affect a toxic response, the next lower dose level shall be examined for complete histopathology.

(iv) An attempt shall be made to correlate gross observations with microscopic findings.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Data shall be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, shall be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of study results.* (i) The findings of a combined chronic toxicity/oncogenicity study shall be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects, the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence, incidence and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(iii) For a negative test to be acceptable, it shall meet the following criteria: No more than 10 percent of any group is lost due to autolysis, cannibalism, or management problems; and survival in each group is no less than 50 percent at 18 months for mice and hamsters and at 24 months for rats.

(3) *Test report.* (i) In addition to the reporting requirements as specified under 40 CFR part 792, subpart J, the following specific information shall be reported:

(A) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals dying.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals exposed.

(B) *Individual animal data.* (*1*) Time of death during the study or whether animals survived to termination.

(*2*) Time of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Food and water consumption data, when collected.

(*5*) Results of ophthalmological examination, when performed.

(*6*) Hematological tests employed and all results.

(*7*) Clinical biochemistry tests employed and all results.

(*8*) Necropsy findings.

(*9*) Detailed description of all histopathological findings.

(*10*) Statistical treatment of results where appropriate.

(*11*) Historical control data, if taken into account.

(ii) In addition, for inhalation studies the following shall be reported:

(A) *Test conditions.* (*1*) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(*2*) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size shall be described.

(B) *Exposure data.* These shall be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and shall include:

(*1*) Airflow rates through the inhalation equipment.

(*2*) Temperature and humidity of air.

(*3*) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(*4*) Actual concentration in test breathing zone.

(*5*) Particle size distribution (e.g., median aerodynamic diameter of particles with standard deviation from the mean).

(d) *References.* For additional background information on this test guideline the following references should be consulted.

(1) D'Aguanno, W. "Drug Safety Evaluation—Pre-Clinical Considerations," *Industrial Pharmacology: Neuroleptics*. Vol. I. S. Fielding and H. Lal, eds. Mt. Kisco, New York: Futura Publishing Co., pp. 317–332 (1974).

(2) Department of Health and Welfare. "The Testing of Chemicals for Carcinogenicity, Mutagenicity, Teratogenicity." Minister of Health and Welfare. Canada: Department of Health and Welfare (1975).

(3) Food and Drug Administration Advisory Committee on Protocols for Safety Evaluation: Panel on Carcinogenesis. "Report on Cancer Testing in the Safety of Food Additives and Pesticides," *Toxicology and Applied Pharmacology*. 20:419–438 (1971).

(4) International Union Against Cancer. "Carcinogenicity Testing," IUCC Technical Report Series Vol. 2, Ed. I. Berenblum. Geneva: International Union Against Cancer (1969).

(5) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances", A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) National Cancer Institute. "Report of the Subtask Group on Carcinogen Testing to the Interagency Collaborative Group on Environmental Carcinogenesis." Bethesda, MD: United States National Cancer Institute (1976).

(7) National Center for Toxicological Research. "Report of Chronic Studies Task Force Research Committee. Appendix B", Rockville, MD: National Center for Toxicological Research (1972).

(8) Page, N.P. "Chronic Toxicity and Carcinogenicity Guidelines," *Journal Environmental Pathology and Toxicology*. 1:161–182 (1977).

(9) Page, N.P. "Concepts of a Bioassay Program in Environmental Carcinogenesis". *Advances in Modern Toxicology* Vol. 3, ed. Kraybill and Mehlman. Washington, D.C.: Hemisphere Publishing Corp., p. 87–171 (1977).

(10) World Health Organization. "Principles for the Testing and Evaluation of Drugs for Carcinogenicity", WHO Technical Report Series No. 426. Geneva: World Health Organization (1969).

(11) World Health Organization. "Guidelines for Evaluation of Drugs for Use in Man", WHO Technical Report Series No. 563. Geneva: World Health Organization (1975).

(12) World Health Organization. "Part I. Environmental Health Criteria 6", *Principles and Methods for Evaluating the Toxicity of Chemicals*. Geneva: World Health Organization (1978).

(13) World Health Organization. "Principles for Pre-Clinical Testing of Drug Safety", WHO Technical Report Series No. 341. Geneva: World Health Organization (1966).

3. In part 799:

PART 799 — [AMENDED]

a. By revising the authority citation for part 799 to read as follows:

Authority: 15 U.S.C. 2601, 2603, 2611, 2625.

b. By adding § 799.5110 to read as follows:

§ 799.5110 Brominated flame retardants.

(a) *Identification of test substances.* (1) Pentabromodiphenyl ether (PBDPE; CAS No. 32534–81–9), octabromodiphenyl ether (OBDPE; CAS No. 32536–52–0), decabromodiphenyl ether (DBDPE; CAS No. 1163–19–5), 1,2-bis(2,4,6-tribromophenoxy)ethane (BTBPE; CAS No. 37953–59–1), and hexabromocyclododecane (HBCD; CAS No. 3194–55–6) shall be tested in accordance with this section.

(2) PBDPE, OBDPE, DBDPE, BTBPE, and HBCD of at least 98 percent purity shall be used as the test substance. For the three diphenyl ethers, "purity" refers to freedom from substances that do not fit the description "brominated diphenyl ethers."

(3) PBDPE as the test substance shall contain at least 58 percent pentabromodiphenyl ether isomers, not more than 25 percent tetrabromodiphenyl ether isomers, and not more than 25 percent hexabromodiphenyl ether isomers. In addition, PBDPE shall not contain more than 10 percent tri- (or lower) brominated diphenyl ether isomers, and also not more than 10 percent hexa(or higher) brominated diphenyl ether isomers.

(4) OBDPE as the test substance shall contain at least 30 percent octabromodiphenyl ether isomers, not more than 45 percent heptabromodiphenyl ether isomers, and not more than 15 percent nonabromodiphenyl ether isomers. In addition, OBDPE shall not contain more than 15 percent hexa- (or lower) brominated diphenyl ether isomers, and also not more than 5 percent deca- (or higher) brominated diphenyl ether isomers.

(5) DBDPE as the test substance shall contain at least 98 percent decabromodiphenyl ether.

(6) Congenerically pure PBDPE shall contain at least 98 percent pentabromodiphenyl ether isomers.

(7) Congenerically pure OBDPE shall contain at least 98 percent octabromodiphenyl ether isomers.

(b) *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 PBDPE, OBDPE, DBDPE, BTBPE, or HBCD, other than as an impurity, after (insert date 44 days after date of publication of the final test rule in the **Federal Register**) 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, for the substances they manufacture.

(c) *Health effects testing*—(1) *Mutagenic effects—gene mutation*—(i)

Required testing. (A) Gene mutation assays in the *Salmonella typhimurium* histidine reversion system shall be conducted with OBDPE in accordance with § 798.5265 of this chapter.

(B) Gene mutation assays in somatic cells in culture shall be conducted with PBDPE, OBDPE, BTBPE, and HBCD in accordance with § 798.5300 of this chapter.

(C) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE or HBCD in accordance with § 798.5275 of this chapter for any of these substances that produces a positive result in either the *Salmonella* assay conducted on OBDPE, DBDPE, and HBCD pursuant to paragraph (c)(2)(i)(A) of this section or the somatic cells in culture assay conducted on PBDPE, OBDPE, DBDPE, BTBPE, and HBCD pursuant to paragraph (c)(2)(i)(B) of this section.

(D) A mouse visible specific locus test (MVSL) or a mouse biochemical specific locus (MBSL) test shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, or HBCD in accordance with § 798.5200 or § 798.5195, respectively, for whichever of these substances produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(2)(i)(C) of this section.

(ii) *Reporting requirements.* (A) Mutagenic effects - gene mutation tests shall be conducted and the final reports submitted to EPA as follows:

(*1*) Gene mutation in *Salmonella*, 9 months after the effective date.

(*2*) Gene mutation in somatic cells in culture, 10 months after the effective date.

(*3*) *Drosophila* sex-linked recessive lethal, 22 months after the effective date.

(*4*) Mouse specific locus, within 51 months of the date of EPA's notification of the test sponsor by certified letter that testing shall be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date for the gene mutation tests in *Salmonella* and gene mutation tests in somatic cells in culture; for the *Drosophila* test, beginning 6 months after the date the final report is submitted for the gene mutation in somatic cells in culture test; and for the mouse specific locus test, beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated.

(2) *Mutagenic effects—chromosomal aberrations* — (i) *Required testing.* (A) *In vivo* cytogenetic assays shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § § 798.5385 or 798.5395 of this chapter.

(B) A dominant lethal assay shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, or HBCD in accordance with § 798.5450 of this chapter, for any of these substances that produces a positive result in the *in vivo* cytogenetic assay conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(C) A heritable translocation assay shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, or HBCD in accordance with § 798.5460 of this chapter, for any of these substances that produces a positive result in the dominant lethal assay conducted pursuant to paragraph (c)(3)(i)(B) of this section.

(ii) *Reporting requirements.* (A) Mutagenic effects-chromosomal aberration testing shall be completed and the final reports submitted to EPA as follows:

(*1*) *In vivo* cytogenetics, within 14 months after the effective date; and dominant lethal assay, within 36 months after the effective date.

(*2*) Heritable translocation assay, within 25 months of the date of EPA's notification of the test sponsor by certified letter that testing shall be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning as follows:

(*1*) For the *in vivo* cytogenetics assay, 6 months after the effective date.

(*2*) For the dominant lethal assay, beginning 6 months after the date the final report is submitted for the *in vitro* cytogenetics test.

(*3*) For the heritable translocation assay, beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated.

(3) *Subchronic toxicity* — (i) *Required testing.* Subchronic toxicity testing shall be conducted by gavage with HBCD in accordance with § 798.2650 of this chapter.

(ii) *Reporting requirements.* (A) The required subchronic toxicity test shall be completed and the final reports submitted to EPA within 18 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date until the final report is submitted.

(4) *Neurotoxicity*—(i) *Required testing*—(A) *Functional observational battery. (1)* A functional observational battery test shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6050.

(*2*) For the purpose of this section the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing, animals shall be treated 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage administration.

(B) *Motor activity.* (*1*) Motor activity testing shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and freguency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing animals shall be treated 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage administration.

(C) *Neuropathology.* (*1*) Neuropathology testing shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD administered by gavage in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), (d)(6) and (d)(8)(iv)(C) of § 798.6400.

(*2*) For the purpose of paragraph (c)(6)(i)(C) of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and freguency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing animals shall be treated 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage administration.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in wax or plastic medium except for the sural nerve which should be embedded in plastic. Multiple tissue specimens (e.g.

brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labelled to provide unequivocal identification. Plastic embedding should follow the method described by Spencer, et al., in paragraph (f) of this section, or an equivalent method.

(ii) *Reporting requirements.* (A) The functional observational battery, motor activity, and neuropathology testing with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 21 months of the effective date.

(B) Progress reports shall be submitted every 6 months beginning 6 months after the effective date until the final report is submitted.

(5) *Reproductive toxicity*—(i) *Required testing.* A reproductive toxicity test shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproductive toxicity test for PBDPE, DBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 29 months of the effective date. The reproductive toxicity test for OBDPE shall be completed and the final report submitted to EPA within 29 months of the test sponsor's receipt of a certified letter from EPA specifying that a reproductive toxicity test for OBDPE be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date for PBDPE, DBDPE, BTBPE, HBCD, and, for OBDPE, beginning 6 months after the test sponsor's receipt of a certified letter specifying that a reproductive toxicity test be initiated until the final report is submitted.

(6) *Developmental toxicity*—(i) *Required testing.* (A) Developmental toxicity testing in two species, a rat and nonrodent, shall be conducted with PBDPE, OBDPE, and HBCD by gavage in accordance with § 798.4900 of this chapter.

(B) Developmental toxicity testing in one non-rodent species shall be conducted with DBDPE and BTBPE by gavage in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final reports submitted to EPA within 12 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date until the final report is submitted.

(7) *Oncogenicity*—(i) *Required testing.* (A) Oncogenicity testing shall be conducted in mice with PBDPE, OBDPE, and BTBPE by gavage in accordance with § 798.3300 of this chapter.

(B) Oncogenicity testing shall also be conducted in both rats and mice with HBCD by gavage in accordance with § 798.3300 of this chapter if a positive result is obtained in any one of the following mutagenicity tests and EPA notifies the sponsor by certified letter that testing shall be initiated:

(*1*) The gene mutation somatic cells in culture assay conducted pursuant to paragraph (c)(1)(i)(B) of this section.

(*2*) The sex-linked recessive lethal assay in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(C) of this section.

(*3*) The *in vivo* cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(C) Criteria for positive test results are established in 40 CFR 798.5395, 798.5385, 798.5300, and 798.5275 of this chapter, respectively.

(ii) *Reporting requirements.* (A) The oncogenicity testing for PBDPE, OBDPE, and BTBPE shall be completed and the final reports submitted to EPA within 53 months of the effective date. The oncogenicity testing for HBCD, if required, shall be completed and final results submitted to EPA within 53 months of the test sponsor's receipt of a certified letter from EPA specifying that an oncogenicity test for HBCD be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date for PBDPE, OBDPE, and BTBPE and, for HBCD, beginning 6 months after the test sponsor's receipt of a certified letter specifying that an oncogenicity test be initiated until the final report is submitted.

(8) *Combined chronic toxicity/oncogenicity*—(i) *Required testing.* Combined chronic toxicity/oncogenicity tests shall be conducted in rats with PBDPE, OBDPE, and BTBPE by gavage, in accordance with § 798.3320 of this chapter.

(ii) *Reporting requirements.* (A) The combined chronic toxicity/oncogenicity testing shall be completed and the final reports submitted to EPA within 53 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date until the final report is submitted.

(d) *Environmental effects testing*—(1) *Algal testing* — (i) *Required testing.* Algal toxicity testing shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1050 of this chapter. Algal toxicity testing shall be conducted with OBDPE and DBDPE in accordance with § 797.1050 of this chapter if an EC50 of $\leq$ 10 μg/L is obtained with PBDPE in this assay or, if that test concentration (EC50) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(ii) *Reporting requirements.* (A) The algal toxicity test for PBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 15 months of the effective date. The algal toxicity test for OBDPE and DBDPE, if required, shall be completed and final results submitted to EPA within 24 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE and BTBPE, and beginning 21 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(2) *Fish chronic toxicity testing*—(i) *Required testing.* Fish early life stage toxicity tests shall be conducted with rainbow trout and sheepshead minnows with PBDPE, BTBPE, and HBCD in accordance with § 797.1600 of this chapter. Fish early life stage toxicity tests shall be conducted with rainbow trout and sheepshead minnows with OBDPE and DBDPE in accordance with § 797.1600 of this chapter if a geometric mean MATC value of $<$ 10 μg/L is obtained with PBDPE in this test with either fish species or, if that test concentration (geometric mean MATC value) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(ii) *Reporting requirements.* (A) The fish early life stage toxicity tests for PBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 18 months of the effective date. The fish early life stage toxicity test for OBDPE and DBDPE, if required, shall be completed and the final reports submitted to EPA within 30 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD, and beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(3) *Invertebrate chronic toxicity testing* —(i) *Required testing.* (A) Daphnid chronic toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1330 of this chapter. A daphnid chronic toxicity

test with OBDPE and DBDPE shall also be conducted in accordance with § 797.1330 of this chapter if a geometric mean MATC of ≦ 10 μg/L is obtained with PBDPE in either this test or the mysid shrimp chronic toxicity tests conducted pursuant to paragraph (d)(3)(i)(B) of this section or, if that test concentration (geometric mean MATC) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(B) Mysid shrimp chronic toxicity test shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1950 of this chapter. Mysid shrimp chronic toxicity tests with OBDPE and DBDPE shall also be conducted in accordance with § 797.1950 of this chapter, if a geometric mean MATC of ≦ 10 μg/L is obtained with PBDPE in either this test or the daphnid chronic toxicity test conducted pursuant to paragraph (d)(3)(i)(A) of this section or, if that test concentration (geometric mean MATC value) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(ii) *Reporting requirements.* (A) Invertebrate chronic toxicity testing shall be conducted and the final reports submitted to EPA as follows:

(*1*) Daphnid chronic toxicity with PBDPE, BTBPE, and HBCD, 18 months after the effective date and, if required with OBDPE and DBDPE, 30 months after the effective date.

(*2*) Mysid shrimp chronic toxicity with PBDPE, BTBPE, and HBCD, 15 months after the effective date and, if required with OBDPE and DBDPE, 24 months after the effective date.

(B) Progress reports shall be as submitted to EPA as follows:

(*1*) For daphnid chronic toxicity, every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(*2*) For mysid shrimp chronic toxicity, every 6 months beginning 9 months after the effective date for PBDPE, BTBPE, and HBCD, and if required, beginning 21 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(4) *Benthic organism chronic toxicity testing* —(i) *Required testing.* Chironomid sediment toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD as specified in § 795.135 of this chapter. Chironomid sediment toxicity tests shall be conducted with OBDPE and DBDPE in accordance with § 795.135 of this chapter if a geometric mean MATC of ≦ 100 mg PBDPE/kg dry weight of sediment is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Chironomid sediment toxicity testing for PBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 18 months of the effective date. Chironomid sediment toxicity testing for OBDPE and DBDPE, if required, shall be completed and the final reports submitted to EPA within 30 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until a final report is submitted.

(5) *Terrestrial organism testing*—(i) *Required testing.* (A) Mallard reproduction tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.2150 of this chapter. This test shall also be conducted with OBDPE and DBDPE in accordance with § 797.2150 of this chapter if a no-observed-effect-level (NOEL) ≦ 500 ppm is obtained with PBDPE in this test.

(B) Earthworm soil subchronic toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 795.150 of this chapter. This test shall also be conducted with OBDPE and DBDPE in accordance with § 795.150 of this chapter if an EC50 of ≦ 100 mg PBDPE/kg dry weight of sediment is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Terrestrial organism testing shall be conducted and the final reports submitted to EPA as follows:

(*1*) Mallard reproduction testing with PBDPE, BTBPE, and HBCD and, if required with OBDPE and DBDPE, 30 months after the effective date.

(*2*) Earthworm toxicity testing with PBDPE, BTBPE, and HBCD, 18 months after the effective date and with OBDPE and DBDPE, 30 months after the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(6) *Terrestrial plant testing*—(i) *Required testing.* (A) Seed germination/root elongation toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.2750 of this chapter. Seed germination/root elongation toxicity tests shall be conducted with OBDPE and DBDPE in accordance with § 797.2750 of this chapter if an EC50 of ≦ 100 mg PBDPE/kg dry weight of soil is obtained with PBDPE in either this test or the early seedling growth toxicity test conducted pursuant to paragraph (d)(6)(i)(B) of this section.

(B) Early seedling growth toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.2800 of this chapter. Early seedling growth toxicity tests shall be conducted with OBDPE and DBDPE in accordance with § 797.2800 of this chapter if an EC50 of ≦ 100 mg PBDPE/kg dry weight of soil is obtained with PBDPE in either this test or the seed germination/root elongation toxicity test is conducted pursuant to paragraph (d)(6)(i)(A) of this section.

(ii) *Reporting requirements.* (A) Terrestrial plant testing shall be conducted and the final reports submitted to EPA as follows:

(*1*) Seed germination/root elongation toxicity test with PBDPE, BTBPE, and HBCD, 15 months after effective date and, if required with OBDPE and DBDPE, 24 months after effective date;

(*2*) Early seedling growth toxicity test with PBDPE, BTBPE, and HBCD, 15 months after effective date and, if required with OBDPE and DBDPE, 24 months after effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, every 6 months beginning 21 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(7) *Immunotoxicity*—(i) *Required testing.* (A) Immunotoxicity tests shall be conducted with PBDPE, BTDPE, and HBCD.

(B) The testing shall be conducted in accordance with the test procedure specified in an article by N.K. Jerne, et. al., entitled "Plaque Forming Cells: Methodology and Theory—I. The Standard Theory", published in *Transplant Reviews* 18:130–191 (1974), and in an article by M.I. Luster et. al., entitled "Methods Evaluation-Development of a Testing Battery to Assess Chemical-Induced Immunotoxicity: National Toxicology Program's Guidelines for Immunotoxicity Evaluation in Mice", published in *Fundamental and Applied Toxicology*, Vol. 10, pp. 2–19. (1988), which are incorporated by reference. Copies of these materials are available in the TSCA Public Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. These materials are also

available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC 20408. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These methods are incorporated as they exist on the effective date of this rule and a notice of any changes to the methods will be published in the **Federal Register**

(C) Immunotoxicity tests shall also be conducted with OBDPE and DBDPE in accordance with the methodology incorporated by reference in paragraph (d)(7)(i)(B) of this section, if a no observed effect level of ≦ 500 ppm is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Immunotoxicity tests for PBDPE, BTBPE, and HBCD shall be conducted and the final reports submitted to EPA within 15 months of the effective date. Immunotoxicity testing for OBDPE and DBDPE, if required, shall be completed and the final results submitted to EPA within 24 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 18 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(8) *Bioconcentration*—(i) *Required testing.* Fish bioconcentration tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1520 of this chapter except for the provisions in paragraphs (c)(1)(i), (c)(1)(iii), (c)(4)(ii)(A), (c)(4)(iii)(A), (c)(4)(iii)(B)(2), (c)(4)(iii)(C), (c)(4)(viii)(A), (c)(5)(i)(C), (c)(5)(i)(D), and (c)(5)(ii)(A) . Fish bioconcentration tests shall be conducted with OBDPE and DBDPE in accordance with § 797.1520, except for the provisions in paragraphs (c)(1)(i), (c)(1)(iii), (c)(4)(ii)(A), (c)(4)(iii)(A), (c)(4)(iii)(B)(2), (c)(4)(iii)(C), (c)(4)(viii)(A), (c)(5)(i)(C), (c)(5)(i)(D), and (c)(5)(ii)(A), if a bioconcentration factor of ≧ 1000 is obtained with PBDPE with this test.

(A) For purposes of this section, the following also applies:

(*1*) *Test procedures*—(*i*) *Summary of the test.* Fish are continuously exposed to at least two constant sublethal concentrations of a test substance under flow-through conditions for a maximum of 91 days. During this time, test solutions and fish are periodically sampled and analyzed using appropriate methods to quantify the test substance concentrations. The maximum depuration period is 56 days.

(*ii*) If steady-state is not reached during 91 days of uptake, the steady-state BCF is calculated using non-linear parameter estimation methods.

(*2*) *Definitive test.* (*i*) At least two concentrations should be tested to assess the propensity of the compound to bioconcentrate. The concentrations selected should not stress or adversely affect the fish. The highest concentration should be less than the limit of water solubility. The lowest concentration should be one-tenth of the higher concentration, as long as that concentration is greater than three times the limit of quantification. The limiting factor for how low one can test is based on the detection limit of the analytical methods. The lower concentration of the test material in the test solution should be at least three times greater than the detection limit in water.

(*ii*) An estimate of the length of the uptake and depuration phases should be made prior to testing. This will allow the most effective sampling schedule to be determined. The uptake phase should continue for 91 days.

(*iii*) The following sampling schedule should be used to generate the appropriate data.

SAMPLING SCHEDULE (DAYS)

Sampling	Treatment	Controls
Exposure	1	1
	7	7
	14	--
	28	28
	56	--
	91	91
Depuration	7	7
	14	14
	28	--
	56	56

(*iv*) The depuration phase shall continue until at least 95 percent of the accumulated test substance and metabolites have been eliminated, but no longer than 56 days.

(*v*) At each of the designated sampling times, triplicate water samples and enough fish should be collected from the exposure chamber(s) to allow for at least three fish tissue analyses. A similar number of control fish should also be collected at each sample point, but only fish collected at the first sampling period and on days 1, 7, 28, and 91 for exposure treatment samples, and on days 7, 14, and 56 of depuration treatment samples should be analyzed. Triplicate control water samples will be collected at the time of test initiation and weekly thereafter. Test solution samples should be removed from the approximate center of the water column.

(*vi*) If steady-state was not reached during the 91 day uptake period, the maximum BCF should be calculated using the mean tissue concentration from that day and the mean water concentration from that and the previous sampling day. An uptake rate constant should then be calculated using appropriate techniques, such as the BIOFAC program developed by Blau and Agin (1978). This rate constant will allow the estimation of a steady-state BCF and the estimated time to steady-state.

(*vii*) If 95 percent elimination has not been observed after 56 days depuration, then a depuration rate constant should be calculated. This rate constant will allow estimation of the time to 95 percent elimination.

(*viii*) All samples shall be analyzed using gas chromatography coupled to a mass spectrometer (GC/MS) to quantitate each polybrominated biphenyl ether (PBBE) isomer present. All tests shall be conducted at aqueous concentrations below the measured water solubility of the specific mixture being tested. All tests shall be performed using samples from the identical commercial mixture. The specific methodology used shall be validated before the test is initiated. The accuracy of the method should be measured by the method of known additions. This involves adding a known amount of the test substance to three water samples taken from an aquarium containing dilution water and a number of fish equal to that to be used in the test. The nominal concentration of these samples shall be the same as the concentration to be used in the test. Samples taken on two separate days shall be analyzed: The accuracy and precision of GC/MS analytical method should be verified using reference samples or split samples or suitable corroborative methods of analysis. The accuracy of the standard solution should be checked against other standard solutions whenever possible.

(B) [Reserved]

(ii) *Reporting requirements.* (A) Fish bioconcentration tests for PBDPE, BTBPE, and HBCD shall be conducted and the final reports submitted to EPA within 18 months of the effective date. Fish bioconcentration tests for OBDPE and DBDPE, if required, shall be completed and the final reports submitted to EPA within 30 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD, and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(e) *Chemical fate testing*—(1) *Water solubility*—(i) *Required testing.* (A) Water solubility tests shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.1860 of this chapter except for the provisions in paragraph (c)(1)(iii).

(B) For the purposes of this section the following provisions also apply:

(*1*) *Performance of the test.* (*i*) Determine the water solubility of the test compound in dilution water at the salinity and temperature specified for the algal toxicity test conducted pursuant to paragraph (d)(1)(i) of this section, for the fish early life stage toxicity tests conducted pursuant to paragraph (d)(2)(i) of this section, for the invertebrate chronic toxicity tests conducted pursuant to paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section, and for the benthic organism toxicity testing conducted pursuant to paragraph (d)(4)(i) of this section.

(*ii*) Water solubility shall be analyzed utilizing an electron capture detector.

(*2*) [Reserved]

(ii) *Reporting requirements.* The water solubility tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(2) *Octanol/water partitioning*—(i) *Required testing.* Log octanol/water partition coefficient tests shall be conducted with PBDPE, OBDPE, and DBDPE in accordance with § 796.1720 of this chapter.

(ii) *Reporting requirements.* The log octanol/water partition coefficient tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(3) *Vapor pressure*—(i) *Required testing.* Vapor pressure tests shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.1950 of this chapter.

(ii) *Reporting requirements.* The vapor pressure tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(4) *Sediment and soil adsorption*—(i) *Required testing.* Sediment and soil adsorption tests shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.2750 of this chapter.

(ii) *Reporting requirements.* The sediment and soil adsorption tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(5) *Photolysis*—(i) *Required testing.* Direct and indirect photolysis tests shall be conducted on congenerically pure PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with §§ 796.3780, 796.3800 and 796.3700 of this chapter.

(ii) *Reporting requirements.* The direct and indirect photolysis tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(6) *Aerobic biodegradation*—(i) *Required testing.* (A) For each respective test substance, biodegradation testing in sediment/water shall be conducted with PBDPE, BTBPE, and HBCD.

(B) The testing shall be conducted using clean, freshwater sediments in accordance with the method described in an A.W. Bourquin article entitled "An Artificial Microbial Ecosystem for Determining Effects and Fate of Toxicants in a Salt-Marsh Environment", published in *Developments in Industrial Microbiology*, Vol. 18, Chapter 11, 1977, which is incorporated by reference. Copies of this material incorporated by reference are available in the TSCA Public Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460. These materials are also available for inspection at the Office of the Federal Register, Rm 8401, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This method is incorporated as it exists on the effective date of this rule and notice of any change to the method will be published in the **Federal Register**.

(C) Biodegradation testing in sediment/water shall also be conducted with OBDPE and DBDPE in accordance with the methodology incorporated by reference in paragraph (e)(6)(i)(B) of this section, if mineralization to CO_2 greater than 10 percent is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Biodegradation testing in sediment/water shall be completed and the final reports submitted to EPA within 12 months of the effective date for PBDPE, BTBPE, and HBCD, and, if required, within 24 months of the effective date for OBDPE and DBDPE.

(B) Progress reports for biodegradation testing in sediment/water shall be submitted to EPA every 6 months beginning 6 months after the effective date for PBDPE, BTBPE, and HBCD, and, if required, every 6 months, beginning 18 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(7) *Anaerobic biodegradation*—(i) *Required testing.* Anaerobic biodegradation testing shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.3140 of this chapter.

(ii) *Reporting requirements.* The anaerobic biodegradation test shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(f) *Reference(s).* For additional background information, the following reference(s) should be consulted.

(1) Spenser, P.S., Bischoff, M.C., and Schaumburg, H.H. "Neuropathological methods for the detection of neurotoxic disease." In: *Experimental and Clinical Neurotoxicology*. P.S. Spenser and H.H. Schaumburg, eds. Baltimore, MD; Williams and Wilkins, pub. pp 743–757 (1980).

(2) [Reserved]

(g) *Effective date.* This section is effective (44 days after publication of the final rule in the **Federal Register**). (Information collection requirements have been approved by the Office of Management and Budget under OMB Control Number 2070–0033.)

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23 25447
32 28133
33 28133
215 25066
650 27225
651 28226
685 ..... 27558, 28812

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List June 24, 1991

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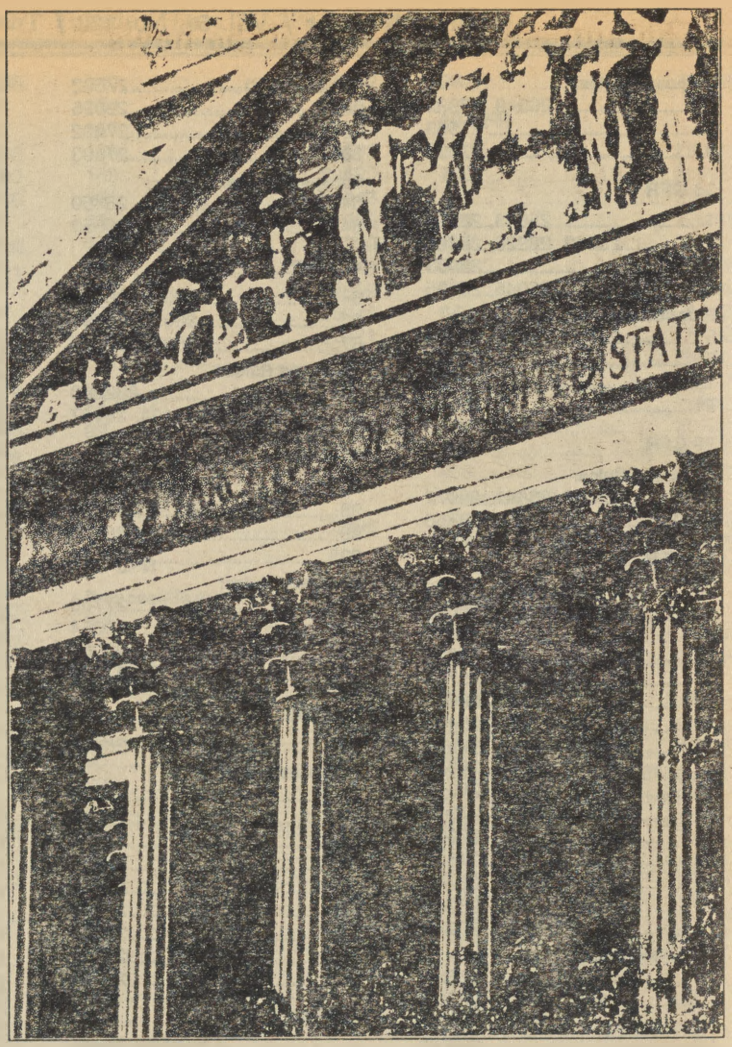

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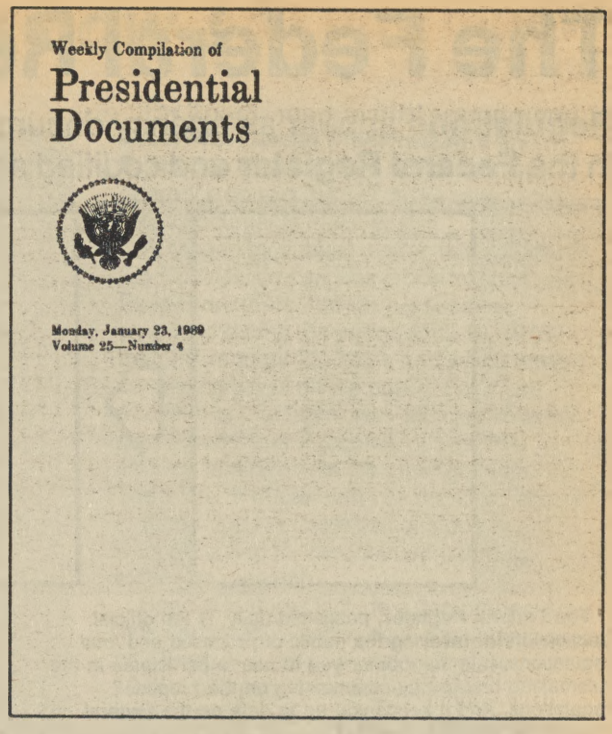

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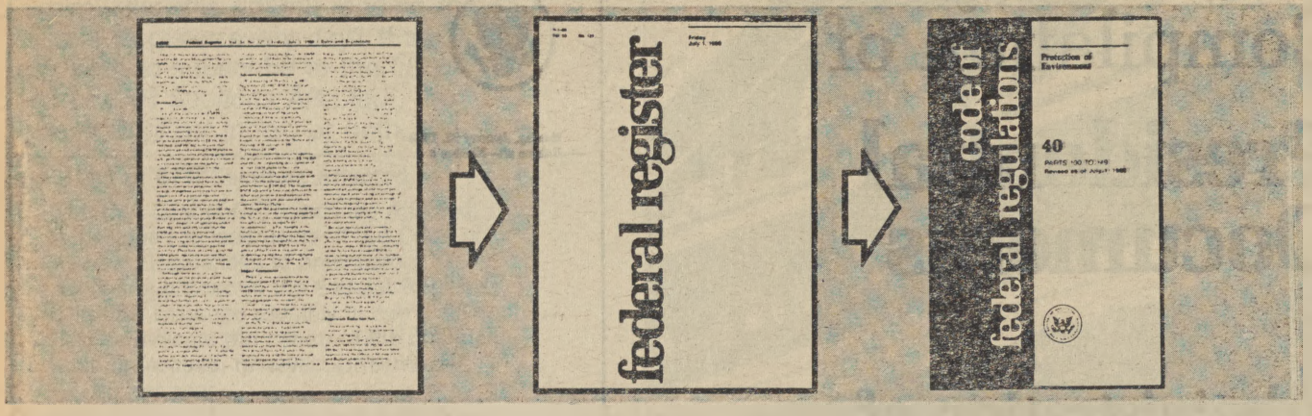

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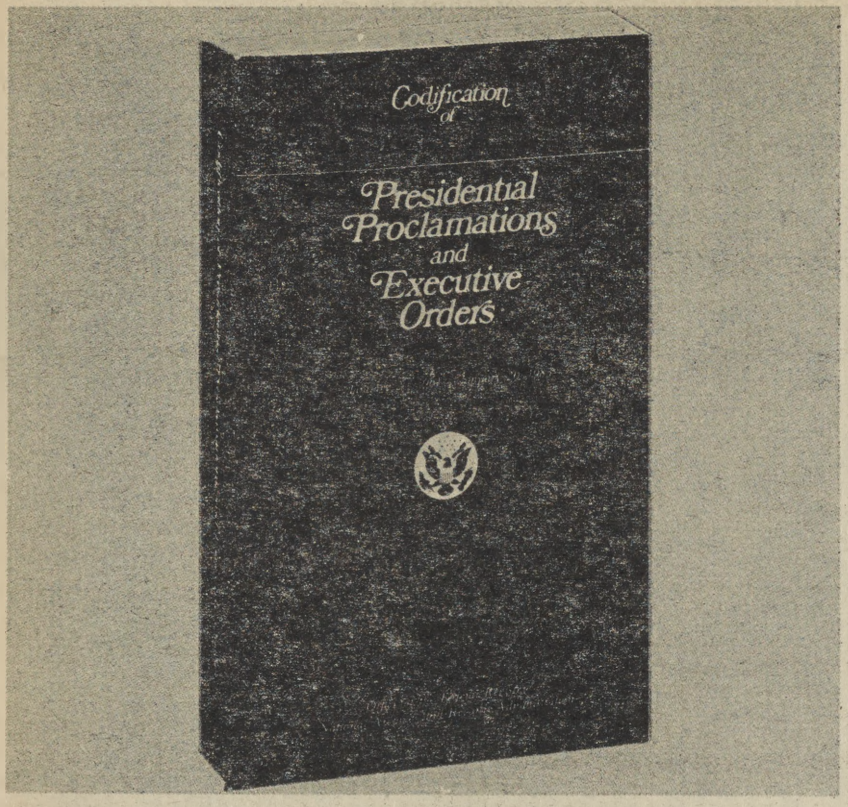

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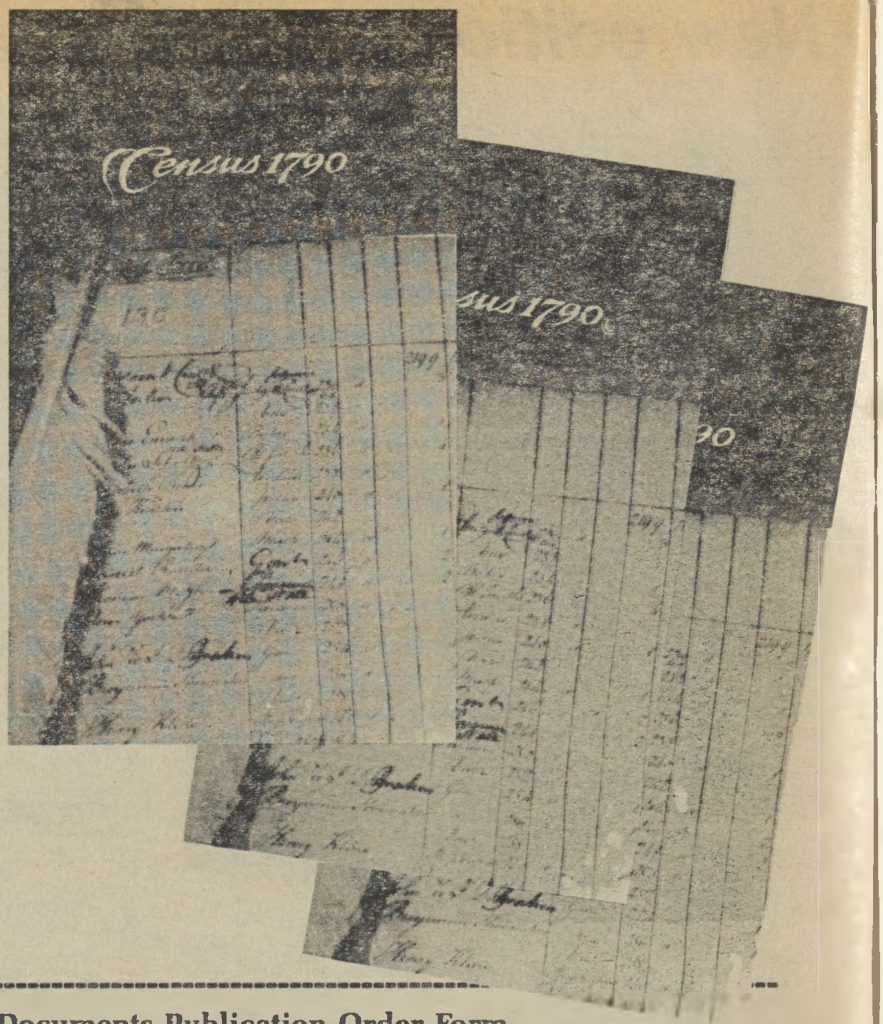

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