

6-28-91

Vol. 56

No. 125

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Friday  
June 28, 1991

# federal register

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U.S. Government Printing Office  
(ISSN 0097-6326)

1868

# federal register

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For information on a briefing in New Orleans, LA, see  
announcement on the inside cover of this issue.



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### NEW ORLEANS, LA

- WHEN:** July 23, at 9:00 am
- WHERE:** Federal Building, 501 Magazine St.,  
Conference Room 1120,  
New Orleans, LA
- RESERVATIONS:** Federal Information Center  
1-800-366-2998

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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[FV-91-290IFR]

#### Handling of Almonds Grown in California; Third Revision of the Salable and Reserve Percentages for the 1990-91 Crop Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule invites comments on further revision of the salable and reserve percentages for California almonds received by handlers during the 1990-91 crop year. The 1990-91 crop year commenced on July 1, 1990. The Almond Board of California (Board), the agency which locally administers the almond marketing order, unanimously recommended at its May 10, 1991, meeting, the revision of the salable and reserve percentages while keeping the export percentage the same at 0 percent. The salable percentage is increased from 80 to 93 percent, and the reserve percentage is decreased from 20 to 7 percent. This interim final rule is authorized under the marketing order for almonds grown in California. This action is necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

**DATES:** Effective Date: June 28, 1991. Comments which are received by July 29, 1991 will be considered prior to any finalization of this interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456.

Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Sonia N. Jimenez, Marketing Specialist, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC, 20090-6456; telephone: (202) 475-5992.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 105 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action decreases the quantity of California almonds which handlers must withhold from normal, competitive markets to meet their reserve obligations under the order for the 1990-91 crop year. The quantity of almonds which handlers must withhold to meet their reserve obligations is decreased from 20 percent to 7 percent of marketable almonds received by handlers for their own accounts during the 1990-91 crop year. The salable percentage of the crop, which could be sold by handlers in any market, is increased from 80 percent to 93 percent. Therefore, this action relaxes restrictions on California almond handlers and does not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990-91 almond crop were established in a final rule published in the *Federal Register* on September 21, 1990 (55 FR 38793). The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. These percentages were established on the basis of two Board recommendations, on June 27 and July 25, 1990, pursuant to §§ 981.47 and 981.49 of the almond marketing order. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990-91 crop year.

However, on December 3, 1990, the Board met to review the salable and reserve percentages that had been established for the 1990-91 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, the Board unanimously recommended revising the salable and reserve percentages. Pursuant to § 981.48 of the almond marketing order, the Board arrived at its recommendation for revising the salable and reserve percentages by reviewing its estimates of marketable supply and combined domestic and export trade demand for the 1990-91 crop year. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the *Federal Register* on February 11, 1991 (56 FR 5308).

At its February 21, 1991, meeting the Board again reviewed the 1990-91 crop year salable and reserve percentages

and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to § 981.48 of the almond marketing order, the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990-91 crop year. A second interim final rule, which further revised the salable percentage from 70 to 80 percent and further revised the reserve percentage from 30 to 20 percent, was published in the March 19, 1991 (56 FR 11499) issue of the **Federal Register**. The March 19 interim final rule revised the February 11 interim final rule by further relaxing restrictions on almond handlers. The comments to the February 11 and the March 19 interim final rules were subsequently addressed, and the March 19 interim final rule was adopted, in a final rule published in the **Federal**

**Register** on May 31, 1991 [56 FR 24678].

The Board made its final review of the 1990-91 crop year salable and reserve percentages at its May 10, 1991, meeting. At that meeting, pursuant to § 981.48 of the almond order, the Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. The purpose of the increase in the salable percentage is to make a larger quantity of California almonds available for normal markets in order to meet higher adjusted trade demand needs during the remainder of the 1990-91, crop year. The 1991-92 crop year has been estimated at 450 million kernelweight pounds by the California Agriculture Statistics Service. In recent years, the almond industry has shipped well over 450 million kernelweight pounds annually. Therefore, the Board

has recommended increasing the salable percentage from 80 percent to 93 percent for the 1990-91 crop year to increase the carryover available in meeting 1991-92 trade demand needs. Finally, the Committee's recommendation to revise the salable and reserve percentages will benefit producers by increasing their returns and benefit handlers by relaxing restrictions and not imposing any additional burden or costs on handlers, such as costs of storing reserve almonds.

The estimates used by the Board on May 10 in reviewing the salable and reserve percentages and in arriving at its latest recommendation are shown below. The Board's July 25, 1990, December 3, 1990, and February 21, 1991, estimates are shown as a basis for comparison.

#### MARKETING POLICY ESTIMATES—1990 CROP

[Kernelweight basis in millions of pounds]

	7/25/90 Initial estimates	12/3/90 Revised estimates	2/21/91 Revised estimates	5/10/91 Revised estimates
<b>Estimated Production:</b>				
1. 1990 Production .....	655.0	655.0	655.0	655.0
2. Loss and Exempt—4% .....	26.0	26.0	26.0	26.0
3. Marketable Production .....	629.0	629.0	629.0	629.0
<b>Estimated Trade Demand:</b>				
4. Domestic .....	190.0	190.0	205.0	205.0
5. Export .....	375.0	375.0	410.0	410.0
6. Total .....	565.0	565.0	615.0	615.0
<b>Inventory Adjustment:</b>				
7. Carryin, 7/1/90 .....	215.0	202.0	202.0	202.0
8. Desirable Carryover, 6/30/91 .....	59.0	77.2	90.1	171.0
9. Adjustment (Item 8 minus item 7) .....	(156.0)	(124.8)	(111.9)	(31.0)
<b>Salable/Reserve:</b>				
10. Adjusted Trade Demand (Item 6 plus item 9) .....	409.0	440.2	503.1	584.0
11. Reserver (Item 3 minus item 10) .....	220.0	188.8	125.9	45.0
12. Salable Percentage (Item 10 divided by item 3 × 100) .....	65%	70%	80%	93%
13. Reserve Percentage (100 percent minus item 12) .....	35%	30%	20%	7%

As the chart above illustrates, the Board increased the desirable carryover from 90.1 million kernelweight pounds to 171.0 million kernelweight pounds. The desirable carryover is the quantity of salable almonds deemed desirable to be carried out on June 30, 1991, for early season shipment during the 1991-92 crop year until the 1991 crop is available for market. Incorporating this change in the trade demand calculations increased the adjusted trade demand from 503.1 million kernelweight pounds to 584.0 million kernelweight pounds, which is 93 percent of the 1990-91 crop.

Therefore, this action releases an additional 13 percent of the crop to the salable category immediately, and the remaining 7 percent (45 million

kernelweight pounds) of the marketable production from the 1990-91 crop will be withheld by handlers to meet their reserve obligations. Reserve almonds may be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, and other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1990-91 crop

year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent was established by the final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793), and reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not changed as a result of this action.

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

After consideration of all relevant matter presented, the Board's

recommendation, and other available information, it is found that the revision of section 981.237 so as to change the salable and reserve percentages for almonds during the crop year which began on July 1, 1990, to 93 percent and 7 percent, respectively, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) This action increases the quantity of almonds that may be marketed immediately; (2) this action was discussed at a public meeting; (3) some handlers have exhausted their supply of salable almonds and should be apprised as soon as possible of the increased salable percentage as contained in this interim final rule; (4) this action is a relaxation of a regulation; and (5) this action provides for a 30-day comment period.

#### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

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

2. Section 981.237 is revised to read as follows:

#### § 981.237 Salable, reserve, and export percentages for almonds during the crop year beginning on July 1, 1990.

The salable, reserve, and export percentages during the crop year beginning on July 1, 1990, shall be 93 percent, 7 percent, and 0 percent, respectively.

Dated: June 21, 1991.

Robert C. Keeney,  
Deputy Director, Fruit and Vegetable  
Division.

[FR Doc. 91-15284 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 981

[FV-91-2911FR]

#### Handling of Almonds Grown in California; Extension of Date for Satisfying Inedible Disposition Obligation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule changes the date from July 31, 1991, to August 31, 1991, by which handlers of California almonds must satisfy their 1990-91 crop year inedible disposition obligations. The action was unanimously recommended by the Almond Board of California (Board), the agency responsible for local administration of the federal marketing order for California almonds. This action is based on a unanimous recommendation made by the Board on May 10, 1991, to allow handlers additional time to process almonds which are being released to the salable category under a separate action published on this day in the *Federal Register*.

**DATES:** Effective Date: June 28, 1991. Comments which are received by July 29, 1991 will be considered prior to any finalization of this interim final rule.

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

**FOR FURTHER INFORMATION CONTACT:** Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, room 2525-S, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5992.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under marketing agreement and Order No. 981 (7 CRR part 981), both as amended, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) under Executive Order 12291 and

Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 105 handlers of California almonds subject to regulation under the marketing order for almonds grown in California during the current season. There are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CRR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This interim final rule provides handlers of California almonds an additional month to satisfy their 1990-91 crop year inedible disposition obligation. Therefore, this action relaxes restrictions on almond handlers and does not impose any additional burden or costs on handlers.

This interim final rule will revise, for 1991 only, § 981.442 of "Subpart—Administrative Rules and Regulations." The action is based on a unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Section 981.442(a)(5) of such rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. This action extends the July 31, 1991, date to August 31, 1991, for handlers' disposition obligations incurred during the 1990-91 crop year only.

Handlers have withheld almonds from normal markets as reserve throughout the 1990-91 crop year. Often, this reserve product is held in an unprocessed form. On May 10, 1991, the Board unanimously recommended a further revision of the salable percentage, increasing it from 80 to 93 percent and decreasing the reserve percentage from 20 to 7 percent for California almonds received by handlers during the 1990-91 crop year. The additional 13 percent reserve is being released to the salable category under a separate action published on this day in the *Federal Register*. It may not be possible for handlers of California almonds to process these almonds and sort out the inedibles in time to meet the current July 31 deadline. Extending the date by which handlers of California almonds must satisfy their 1990-91 crop year inedible disposition obligations will allow handlers additional time to process their reserve inventory and, thus, satisfy their obligations.

The Board considered not changing the July 31 date for satisfying the inedible disposition obligation, or utilizing a different date. However, the present date may impose difficulties on those almond handlers whose processing capabilities may not allow them to meet the current July 31 deadline, and possibly lead to violations. No specific alternative dates were discussed since the Board concluded that a 30-day extension was adequate to meet the needs of the almond industry.

Therefore, this action changes the date from July 31, 1991, to August 31, 1991, which will allow almond handlers additional time to process their reserve inventory and thus satisfy their 1990-91 crop year inedible disposition obligations.

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

After consideration of all relevant material presented, including the information and recommendation

submitted by the Board and other available information, it is found that the change as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) This action relaxes restrictions on handlers by extending a July 31, 1991, deadline concerning their inedible disposition obligations; (2) this action should be taken as soon as possible before July 31, 1991, so that handlers may plan their operations accordingly; (3) this action was discussed at a public meeting; and (4) this action provides for a 30-day comment period.

#### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

#### Subpart—Administrative Rules and Regulations

Note: This amendment to this section will not be published in the annual Code of Federal Regulations.

Revise the last sentence in paragraph (a)(5) of § 981.442 to read as follows:

#### § 981.442 Quality control.

(a) \* \* \*

(5) \* \* \* Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred: *Provided*, That for the 1990-91 almond crop year, handlers have until August 31, 1991, to satisfy their inedible disposition obligations.

Dated: June 21, 1991.

Robert C. Keeney,  
Deputy Director, Fruit and Vegetable  
Division.

[FR Doc. 91-15285 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-02-M

#### DEPARTMENT OF THE TREASURY

#### Office of the Comptroller of the Currency

#### 12 CFR Part 21

[Docket No. 91-6]

#### Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Compliance

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency ("OCC"), in conjunction with the other federal banking agencies, has reviewed 12 CFR part 21—Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Compliance and has determined that the regulation should be revised to reflect changes in the technology of security devices and to implement changes required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The OCC published the proposed revisions to part 21 for comment on April 18, 1990 (55 FR 14424). The revisions incorporate the amendments made to the Bank Protection Act of 1968 by FIRREA and provide depository institutions with added flexibility in addressing their security needs. Further, by eliminating numerous technical references to specific security devices, the final rule will avoid the need to periodically revise the regulation to reflect particular advances in security device technology.

**EFFECTIVE DATE:** July 29, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874-5170; Robert J. Roth or Scott R. Pratt, Attorneys, Legal Advisory Services Division (202) 874-5330, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The Bank Protection Act of 1968 ("Act"), Public Law No. 90-389, 82 Stat. 294 (1968), 12 U.S.C. 1881 *et seq.*, requires the Federal banking agencies (the Comptroller of the Currency, Board of Governors of the Federal Reserve

System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision) to issue regulations establishing minimum standards for the installation and operation of bank security devices, and to implement procedures to both discourage crimes against depository institutions and assist in the identification of individuals who commit such acts.

On January 16, 1969, the Federal banking agencies adopted a uniform regulation to implement the Act. (34 FR 612). Aside from certain non-substantive amendments over the years, the regulation has remained largely unchanged since its adoption. The OCC, along with the other Federal banking agencies, requested comments on a proposed revision of this regulation last year. (55 FR 14424, April 18, 1990).

The OCC received a total of fourteen comments on the proposed changes to 12 CFR part 21. Six of these comments were received from banks; three were received from manufacturers of security equipment; and five were received from associations connected with banks (e.g., trade associations). In general, commenters were supportive of the proposed revisions. Five commenters supported elimination of appendix A of the regulation, and four commenters supported elimination of appendix B of the regulation. Three commenters opposed the elimination of these appendices. Only one of the equipment manufacturers opposed the changes. The primary objection of those opposing the changes was that the revised standards, while establishing minimum standards, did not provide sufficient guidance to replace the more detailed appendix A and appendix B. One of the trade associations opposed the deletion of these appendices because, in its view, security officers of small institutions depend on these appendices for guidance.

Appendix A sets forth specifications for security devices to be used in banks. The OCC is deleting this appendix because it is too specific and parts of it have become obsolete. The OCC believes that any standards that continue to reference specific security devices are also likely to become obsolete because bank security technology is continuing to advance at a rapid pace. To avoid the necessity of frequently updating any list of required security devices, the revised regulation requires each bank to designate a security officer to administer a written security program. The regulation requires that, at a minimum, four specific security devices be installed. The revised regulation leaves the

determination of which specific additional security devices will best meet the needs of the security program to the discretion of the security officer.

This approach allows the security officer to choose the most up-to-date equipment that meets the requirements of the particular bank. Some commenters recommended referring to Underwriters Laboratory ("UL") approval or American Society for Testing and Materials ("ASTM") specifications as a substitute for appendix A. However, because the level of risk varies from institution to institution, the OCC does not believe that it is appropriate to specify any particular security devices as mandatory. Nevertheless, security officers would be expected to identify the level of risk to their particular institution, take into consideration applicable UL and ASTM standards, and adopt an appropriate security program.

Appendix B concerned proper employee conduct after a robbery. Although this appendix has been eliminated, the OCC believes that employee training should be included in a bank's security program and notes that several organizations offer training programs for bank employees and security officers.

Some letters that were generally supportive of the revisions commented that the regulation should be expanded to encompass "white-collar crime" as well. This regulation, however, is promulgated under the Bank Protection Act, which is specifically intended to "discourage robberies, burglaries, and larcenies." Although the OCC agrees that "white-collar crimes" like fraud and embezzlement are problems, the OCC believes that these crimes are covered by other laws outside the scope of this regulation.

The revised regulation establishes a minimum standard by requiring four specified security devices: (1) A secure space for cash; (2) a lighting system for illuminating the vault; (3) an alarm system; and (4) tamper resistant locks on exterior doors and windows. In addition, the revised regulation establishes the contents of a security program, which must include, among other things, procedures for opening and closing for business, for safekeeping of valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise a bank's security program. To assist banks in establishing their programs, the regulation suggests certain factors to be considered when selecting additional security devices. In

making these suggestions, the OCC notes that in the 22 years since the passage of the Bank Protection Act, trade associations and other vendors have produced security manuals and information designed for banks of various sizes.

To ensure that a bank's security program is reviewed on a regular basis for effectiveness, the regulation requires that the security officer make a report to the bank's board of directors at least annually. This report should be reflected in the minutes of the board meeting in which it is given. FIRREA eliminated the previous requirement that reports must be filed periodically with a bank's primary supervisory agency. Nevertheless, annual reports to the board of directors should still include information such as the status of employee training, the number of offenses against the bank, and the success of prosecution for such offenses.

Additionally, the Office of Management and Budget control number for § 21.11 is being revised to reflect the current number.

#### Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Small entities were already complying with the security standards established in the prior regulation. This revision provides significant flexibility in devising security programs, and should help reduce costs to small entities. Requiring that reports be made to the bank's board of directors, rather than requiring reports be sent to the regulator, should also ease the regulatory burden on small entities.

#### Executive Order 12291

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291 and, therefore, does not require a Regulatory Impact Analysis. This final rule will not have an annual impact on the economy of \$100 million or more; would not result in a major increase in the cost of bank operations or government supervision; and would not have a significant adverse effect on competition, employment, investment, productivity, or innovation. Because national banks are required to maintain minimum security devices and procedures under the existing regulation, it is not anticipated that adhering to the revised regulation will prove burdensome to national banks.

### Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3505(h)) under the control number 1557-0180. The estimated annual burden for maintaining the written security program may vary from several minutes to an hour or more depending on individual circumstances with an estimated average of .25 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557-0180), Washington, DC 20503.

### List of Subjects in 12 CFR Part 21

Currency, National banks, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble, part 21 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

### PART 21—[AMENDED]

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

**Authority:** 12 U.S.C. 93a, 1818, 1881-1884, 3401-3422.

Subpart A of part 21 is revised to read as follows:

#### Subpart A—Minimum Security Devices and Procedures

Sec.

- 21.1 Purpose and scope of subpart A of this part.  
21.2 Designation of security officer.  
21.3 Security program.  
21.4 Report.

#### Subpart A—Minimum Security Devices and Procedures

##### § 21.1 Purpose and scope of subpart A of this part.

(a) This subpart is issued by the Comptroller of the Currency pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882) and is applicable to all national banking associations and all banks located in the District of Columbia subject to the supervision of the Office of the Comptroller of the Currency. It requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and

apprehending persons who commit such acts.

(b) It is the responsibility of a bank's board of directors to comply with this regulation and ensure that a security program which equals or exceeds the standards prescribed by this part is developed and implemented for the bank's main office and branches (as the term "branch" is used in 12 U.S.C. 36).

##### § 21.2 Designation of security officer.

Within 30 days after the opening of a new bank, the Bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the board of directors, for immediately developing and administering a written security program to protect each banking office from robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(Approval by the Office of Management and Budget under control number 1557-0180).

##### § 21.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification or conviction; such procedures may include, but are not limited to:

(i) Using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices;

(ii) Maintaining a camera that records activity in the banking office; and

(iii) Retaining a record of any robbery, burglary or larceny committed or attempted against a banking office;

(3) Provide for initial and periodic training of employees in their responsibilities under the security program and in proper employee conduct during and after a robbery; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each national bank shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) Tamper-resistant locks on exterior doors and exterior windows designed to be opened;

(4) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery, burglary or larceny; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, or larceny;

(iii) The distance of the banking office from the nearest responsible law enforcement officers and the time required for such law enforcement officers ordinarily to arrive at the banking office;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the banking office structure and its surroundings.

##### § 21.4 Report.

The security officer for a national bank shall report at least annually to the bank's board of directors on the effectiveness of the security program. The substance of such report shall be reflected in the minutes of the Board meeting in which it is given.

(Approved by the Office of Management and Budget under control number 1557-0180).

3. In § 21.11, paragraph (f)(1) and the parenthetical at the end of the section are revised to read as follows:

##### § 21.11 Reports of crimes and suspected crimes.

\* \* \* \* \*

(f) *Exemptions.* (1) Banks need not file Criminal Referral Forms for robberies and burglaries committed or attempted at a banking office of a bank if the bank's security program provides for the maintenance of records under § 21.3(a)(2)(iii) documenting any such occurrences.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1557-0180).

### Appendix A and B [Removed]

4. Appendixes A and B to part 21 are removed.

Dated: June 24, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-15599 Filed 6-27-91; 8:45 am]

BILLING CODE 4610-33-M

**Office of Thrift Supervision****12 CFR Parts 506, 563 and 568**

[No. 91-229]

RIN 1550-AA25

**Minimum Security Devices and Procedures****AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (the "OTS"), in coordination with the other Federal Financial institution supervisory agencies, has reviewed its regulation concerning minimum security devices and procedures, and determined that it is appropriate to revise the regulation to reflect changes in the technology of security devices, and to implement changes made by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183. The proposed revision was published for comment by the OTS in March 1990 (55 FR 10247 (March 20, 1990)). The revision incorporates amendments made to the Bank Protection Act of 1968 by FIRREA and provides savings associations with the flexibility to avoid the technical obsolescence that occurred with the existing regulation.

**EFFECTIVE DATE:** July 29, 1991.

**FOR FURTHER INFORMATION CONTACT:** Larry A. Clark, Program Manager, Trust, Specialized Programs (202) 906-5628, Office of Thrift Supervision, 1700 G St. NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Bank Protection Act of 1968 (12 U.S.C. 1881-4) requires the Federal financial institution supervisory agencies to establish minimum standards for security devices and procedures to discourage financial institution crime and to assist in the identification of persons who commit such crimes. To implement this statute a uniform regulation was adopted in 1969 by each of the Federal supervisory agencies—Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board (predecessor to the OTS). With the exception of minor changes in 1973 and 1981, this regulation has not been modified since it was first adopted. The OTS, along with the other Federal financial institution supervisory agencies, requested comments on a proposed revision to this regulation last year. (55 FR 10247 (March 20, 1990)).

The OTS received a total of twelve comments on the proposed changes to its regulation on minimum security devices and procedures. Eight comments were received from savings associations, two from trade associations, and two from manufacturers of security equipment. The OTS also reviewed and considered comments received on the proposed rule by the other Federal financial institution supervisory agencies. Eleven of the twelve comments expressed overall support for the revisions. The opposing comments from a manufacturer of security equipment, expressed concern that the elimination of minimum security standards could among other things expose associations to unnecessary risks. Within the context of overall support, several comments suggested changes to specific sections or subsections of the regulation, many of which were incorporated in this final rule.

One commenter noted that OTS regulations pertaining to reports of crimes, suspected crimes, and unexplained losses (12 CFR 563.180(d)(2)) do not require that OTS Form 366 be submitted for the types of crimes for which a record must be kept under section 568. Since this final rule provides that retaining such a record is a suggested procedure under § 568.3(a)(2)(iii), § 563.180(d)(2) is being amended in order to be consistent with this rule.

Appendix A of the current rule contains specifications for security devices to be used in savings associations. The OTS is deleting this appendix because it is too specific and has become obsolete. The OTS believes that any standards that continue to reference specific security devices are also likely to become obsolete because technology is continuing to advance at a rapid pace. To avoid the necessity of constantly updating required security devices, the revised regulation requires each savings association to designate a security officer to administer a written security program that would require, at a minimum, that four specific security devices be installed, but would leave to the discretion of the security officer the determination of which additional security devices will best meet the needs of the program. In this way the security officer can choose the most up-to-date equipment that meets the requirements of the particular association.

Some commenters recommended referring to Underwriters Laboratory ("UL") approval or ANSI specifications as a substitute for appendix A. Because the level of risk varies from institution to

institution, the OTS does not believe that it is appropriate to specify any particular additional security device(s) as mandatory. Nevertheless, OTS expects security officers to identify the level of risk to their institution and adopt an appropriate security program, taking into consideration applicable ANSI and UL standards.

Appendix B specified proper employee conduct after a robbery.

Although this appendix has been eliminated, the OTS believes that training of employees should be included in an association's security program and notes that several organizations offer training programs for employees of financial institutions and security officers.

Some letters that were generally supportive of the revision commented that the regulation was too narrow and should cover "white-collar crime" as well. The OTS's regulation implements the Bank Protection Act, which is specifically intended to "discourage robberies, burglaries, and larcenies." While the OTS agrees that white-collar crimes such as fraud and embezzlement are problems, these crimes are covered by other laws and regulations outside the scope of part 568.

The revised regulation establishes a minimum standard by requiring four specified security devices: A secure space for cash; a lighting system for illuminating the vault; an alarm system; and tamper resistant locks on exterior doors and windows. In addition, the revised regulation establishes the contents of a security program, e.g., procedures for opening and closing for business, for safekeeping of valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise an association's security program. To assist associations in establishing their program, the regulation suggests certain factors to be considered when selecting additional security devices. In making these suggestions, the OTS notes that in the 22 years since passage of the Bank Protection Act, trade associations and other vendors have produced security manuals and information designed for institutions of various sizes.

To ensure that an association's security program is reviewed on a regular basis for effectiveness, the regulation requires a report by the security officer to the association's board of directors at least annually. This changes the previous requirement, which was eliminated by FIRREA, that reports must be filed periodically with a financial institution's primary supervisory agency. Nevertheless, the

annual reports to the board of directors should still contain information such as the status of employee training, the number of offenses against the association, and the success or prosecution for such offenses.

**Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Small entities already were complying with the security standards established in the prior regulation, and this revision provides for more flexibility in devising security programs, which should help minimize the existing costs to the institutions. The amendment also replaces required reports to the government with annual reports to the association's board of directors, which should ease the regulatory burden on small institutions.

**Executive Order 12291**

The OTS has determined that this final rule does not constitute a major rule and, therefore, does not require a Regulatory Impact Analysis.

**Paperwork Reduction Act**

The collections of information contained in this final rule were submitted to and approved by the Office of Management and Budget ("OMB") at the proposed rule stage, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). OMB has assigned this collection of information OMB Control No. 1550-0062.

The collections of information referenced in this final rule may be found at 12 CFR 568.2 and 568.4. The OTS requires the submission of this information to ensure that savings associations are in compliance with the statutory and regulatory requirements relating to minimum security devices and procedures.

Comments on the collection of information should reference the aforementioned control number and should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

**List of Subjects**

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments,

Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Penalties, Reporting and recordkeeping requirements, Savings associations, Security measures.

**Authority and Issuance**

Accordingly, the OTS hereby amends parts 506, 563, and 568, chapter V, title 12, Code of Federal Regulations, as set forth below:

**SUBCHAPTER A—ORGANIZATIONS AND PROCEDURES**

**PART 506—[AMENDED]**

1. The authority citation for part 506 continues to read as follows:

**Authority:** Section 2(a), 95 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7

2. Section 506.1 is amended by adding two new entries to the table in paragraph (b) to read as follows:

**§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
568.2	1550-0062
568.4	1550-0062

**SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS**

**PART 563—[AMENDED]**

3. The authority citation for part 563 continues to read as follows:

**Authority:** Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

4. Section 563.180 is amended by revising the introductory text to paragraph (d)(2) to read as follows:

**§ 563.180 Criminal referrals and other reports or statements.**

\* \* \* \* \*

(d) *Reports of crimes, suspected crimes, and unexplained losses.* \* \* \*

(2) *Filing of reports.* Except as permitted under paragraph (d)(3) of this section, and except where a security program developed under § 568.3(a) of this subchapter provides for the maintenance of a record documenting and robberies, burglaries and non-employee larcenies, a savings association or service corporation shall notify the appropriate law enforcement authorities and the OTS by filing OTS form 366 within 14 business days after discovery of any crime, suspected crime, or unexplained loss suffered by the savings association or service corporation, including:

\* \* \* \* \*

5. Part 568 is revised to read as follows:

**PART 568—SECURITY PROCEDURES**

- Sec.
- 568.1 Authority, purpose and scope.
- 568.2 Designation of security officer.
- 568.3 Security program.
- 568.4 Report.

**Authority:** Secs. 2-5, 82 Stat. 294-295 (12 U.S.C. 1831-1984).

**§ 568.1 Authority, purpose, and scope.**

(a) This part is issued by the Office of Thrift Supervision (the "OTS") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), and is applicable to savings associations. It requires each association to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and prosecution of persons who commit such acts.

(b) It is the responsibility of an association's board of directors to comply with this regulation and ensure that a written security program for the association's main office and branches is developed and implemented.

**§ 568.2 Designation of security officer.**

Within 30 days after the effective date of insurance of accounts, the board of directors of each savings association shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time but no later than 180 days, and to administer a written security program for each of the association's offices.

**§ 568.3 Security program.**

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the

safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the association and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to:

(i) Maintaining a camera that records activity in the office;

(ii) Using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and

(iii) Retaining a record of any robbery, burglary, or larceny committed against the association;

(3) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each savings association shall have, at a minimum, the following security devices:

(1) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the office;

(3) Tamper-resistant locks on exterior doors and exterior windows that may be opened;

(4) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency and other valuables exposed to robbery, burglary, or larceny;

(iii) The distance of the office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the office; and

(vi) The physical characteristics of the structure of the office and its surroundings.

#### § 568.4 Report.

The security officer for each savings association shall report at least annually to the association's board of directors on the implementation, administration,

and effectiveness of the security program.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-15361 Filed 6-27-91; 8:45 am]

BILLING CODE 6720-01-M

## Internal Revenue Service

### 26 CFR Part 31

[T.D. 8354]

RIN 1545-AP62

### Membership in a Retirement System— State and Local Government Employees

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 3121(b)(7)(F) of the Internal Revenue Code. The final regulations contain rules for determining whether an employee of a State or local government entity is a member of a retirement system of that entity for purposes of determining whether the employee's wages are subject to tax under the Federal Insurance Contribution Act (FICA). The final regulations reflect the enactment of section 3121(b)(7)(F) by the Omnibus Budget Reconciliation Act of 1990. The final regulations provide State and local government entities with guidance necessary to comply with the law and will affect State and local government entities, their retirement systems and certain of their employees.

**EFFECTIVE DATE:** These regulations are effective July 1, 1991, and apply to services performed after July 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Robin Ehrenberg (202) 377-9372 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

This document contains final regulations under section 3121(b)(7)(F) of the Internal Revenue Code of 1986 (Code). The final regulations reflect the enactment of section 3121(b)(7)(F) by section 11332 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508, 104 Stat. 1388 (OBRA 1990). Proposed regulations under section 3121(b)(7)(F) were published in the *Federal Register* on April 10, 1991 (56 FR 14488). A public hearing on the proposed regulations was held May 20, 1991.

These regulations are issued under the authority contained in sections 3121 and 7805 of the Code.

## Background

Under prior law, service as an employee for a State or local government entity was generally not treated as employment for purposes of the Federal Insurance Contributions Act (FICA), and wages of such an employee were thus generally not subject to FICA tax, unless there was an agreement under section 218 of the Social Security Act in effect between the State and the Secretary of Health and Human Services covering the service. OBRA 1990 amended prior law by adding a new section 3121(b)(7)(F) to the Internal Revenue Code. Section 3121(b)(7)(F) expands the definition of "employment" for FICA tax purposes to include service performed after July 1, 1991, as an employee for a State or local government entity unless the employee is a "member of a retirement system" of such entity. Exceptions are provided for certain emergency workers, election workers, patients in hospitals and other individuals. The rule in section 3121(b)(7)(F) also does not affect prior-law exceptions from employment such as that provided for services performed by certain students employed in public schools, colleges and universities, and certain other groups.

OBRA 1990 made a similar change to corresponding provisions of the Social Security Act. Thus, service by an employee of a State or local government entity who is not a member of a retirement system of such entity after July 1, 1991, will generally be taken into account in determining the employee's eligibility for Social Security and Medicare benefits.

## Overview of Regulations

### 1. Meaning of Retirement System

With the enactment of section 3121(b)(7)(F) and the corresponding provisions of the Social Security Act, the Congress ensured that service by employees of State and local government entities would be covered either under Social Security or under a public retirement system providing meaningful benefits. To facilitate this purpose, the proposed regulations required, as do the final regulations, that in order for service in the employ of a State or local government entity to qualify for the exception from employment under section 3121(b)(7) the employee must be a member of a retirement system that provides at least a minimum level of retirement benefits to that employee.

A defined benefit retirement system maintained by a State or local government entity will generally satisfy

this minimum retirement benefit requirement with respect to an employee if the employee has a total accrued benefit comparable to the basic retirement benefit the employee would have under Social Security, based on his or her total compensation and periods of service with the entity. Generally, early retirement benefits may not be taken into account in determining whether this requirement is satisfied. Similarly, a defined contribution retirement system will generally satisfy this requirement with respect to an employee for a period within a plan year if an allocation equal to at least 7.5 percent of the employee's compensation for the period is made to his or her account.

Under the final regulations, as under the proposed regulations, generally any retirement system that satisfies this minimum retirement benefit requirement may be treated as a retirement system for purposes of section 3121(b)(7)(F). Thus, for example, the fact that a retirement system is not a qualified plan under the Internal Revenue Code is not relevant. Furthermore, benefits provided through employee contributions are taken into account to the same extent as benefits provided through employer contributions. Thus, under some circumstances a plan may be treated as a retirement system even if it is completely funded through elective or after-tax employee contributions.

Concurrently with the issuance of the final regulations, the Internal Revenue Service is issuing a revenue procedure setting forth a number of safe harbor formulas for defined benefit retirement systems pursuant to the authority granted in such regulations. This revenue procedure was previously issued in proposed form as an announcement.

Many comments were received suggesting modifications to the minimum retirement benefit requirement as that rule was set forth in the proposed regulations and proposed revenue procedure. Many of these suggestions have been adopted.

Several comments were received requesting that the determination of whether an employee has a benefit meeting the minimum retirement benefit requirement be based not upon the benefit provided by that employer, but upon the total benefits and service of an employee under the retirement system in which he or she participates. This is of particular significance in those State and local jurisdictions that contribute to large state-wide programs (e.g., public employees retirement systems) providing portability for employees with service relating to more than one contributing employer. The final

regulations generally adopt this suggested approach. Thus, if the employee is a participant in a system that is maintained by more than one political subdivision, then the employee's total benefit under the system may be considered, regardless of the fact that the benefit may relate to service with other than the current employer. This system-wide approach may be used only if all service under the system is considered in determining the employee's retirement benefit.

Many commentators stated that the definition of compensation contained in the proposed regulation and revenue procedure (generally the FICA contribution base) lacked sufficient flexibility for State and local retirement systems to utilize the safe harbors to meet the minimum retirement benefit requirement. The concerns of the commentators focused on the fact that many retirement systems use definitions of compensation that vary in significant respects from the FICA contribution base. For example, several commentators stated that definitions of compensation often exclude one-time payments, such as cashed-out annual leave, that are not representative of an employee's wage history. In addition, definitions of compensation also commonly exclude such extraordinary payments as overtime or bonus pay. In response to these comments, the final regulations provide that the definition of compensation must be at least as inclusive as the base pay of the employee. In addition, the safe harbors under the revenue procedure have been modified so that an employer may use any less inclusive definition of compensation, provided that the benefit percentage (e.g., the 1.5 percent factor) is adjusted to reflect aggregate differences between the definition of compensation under the regulation and the definition of compensation under the system. Thus, for example, under the final regulations, the safe harbor formulas may be met by a system that limits the compensation considered in determining the retirement benefit to an amount lower than the FICA contribution base (e.g., \$30,000), provided the benefit level is increased sufficiently.

The final regulations also provide that service and compensation related to an employee's other than full-time employment may, in some cases, be disregarded in determining the employee's required level of benefit. Thus, for example, if a full-time teacher holds another job position with the school system, then whether the benefit of that teacher meets the minimum retirement benefit requirement may (but is not required to) be determined solely

by reference to the service and compensation related to the full-time position.

Several comments were received requesting greater flexibility with respect to the service crediting rules contained in the proposed revenue procedure for part-time, seasonal or temporary employees. In response to these comments, this rule has been modified to permit any reasonable service crediting method to be used, provided it does not result in double proration. Thus, a system may prorate the benefit of a part-time, seasonal or temporary employee either on the basis of full-time compensation or on the basis of full-time service, but may not prorate such benefit based on both compensation and service.

The final regulations retain, with certain modifications, the transition rule of the proposed regulations with respect to defined benefit retirement systems. The transition rule provides that the minimum retirement benefit requirement does not apply to defined benefit retirement systems in existence on November 5, 1990 (the date of enactment of OBRA 1990) for plan years beginning before January 1, 1993, unless benefit levels under the system are materially reduced. Under the proposed regulations, a retirement system also could not utilize this transitional relief if there was a material increase in coverage. In response to comments, this provision is not part of the final regulations. Thus, the fact that new participants are added to the retirement system does not affect the transition relief granted the retirement system with respect to employees who participated in the system on November 5, 1990. This transition relief also extends to new participants hired to fill positions of employment that were covered under the system on that date (whether on a mandatory or elective basis). However, the minimum retirement benefit rule does apply to new participants who are in positions that were not covered under the system on the date of enactment of OBRA 1990.

A number of commentators requested transition relief for defined contribution retirement systems. In response to these requests, the final regulations provide that for plan years beginning before January 1, 1993, a defined contribution retirement system that was in existence on the date of enactment of OBRA 1990, may meet the minimum retirement benefit requirement based upon a 6 percent, rather than the usual 7.5 percent, contribution rate. Conditions similar to those that apply to the defined

benefit transition rule apply to this rule as well.

#### 2. *Meaning of Member*

The final regulations retain the general rule set forth in the proposed regulations that an employee is treated as a member of a retirement system only if he or she actually participates in the system and actually has an accrued benefit or actually receives an allocation sufficient to satisfy the minimum retirement benefit requirement. Allocations or accruals that are conditioned on the satisfaction of service, employee election or other requirements are generally not taken into account for this purpose unless and until the employee has actually satisfied those requirements.

The final regulations retain the alternative lookback method of determining membership to provide certainty at the beginning of a calendar year regarding whether an employee will be treated as a member of a retirement system for that year, and to minimize administrative burdens on employers. Under the alternative lookback method, a reasonable belief test is substituted for the lookback test in an employee's first and last years of participation. Thus, for example, a new employee who is admitted to a system on the day he or she is hired but will not accrue a benefit for the first year of participation unless he or she is still employed on the last day of the plan year may be treated as a member of the retirement system throughout the plan year if it is reasonable to believe that the employee will in fact be present on that last day and will accrue a benefit sufficient to satisfy the minimum retirement benefit requirement.

In response to several comments, the final regulations expand the special rule in the first year of participation to allow for a delay in the imposition of FICA taxes with respect to a new employee, in certain cases, until the first day of the second month of service with the employer. This rule is available only with respect to employees who are not part-time seasonal or temporary employees and is adopted to accommodate those systems that do not allow immediate participation in their retirement system and those elective systems that cannot process elections quickly enough to permit immediate participation. This rule of administrative convenience is available only to those employers maintaining a retirement system in which the employee can actually participate by the first day of the second month of service with the employer.

The final regulations also retain, with modifications, the special transition rules provided in the proposed

regulations for the period July 1 through December 31, 1991. Under these rules, an employee may generally be treated as a member of a retirement system if it is reasonable to believe that he or she will become a member by January 1, 1992.

Certain commentators were concerned that the transition period did not grant sufficient relief in those instances in which the legislative body did not convene until late 1992 or 1993. The transition rules have been modified in light of these concerns. Thus, in those instances in which a plan amendment is necessary in order to meet the minimum retirement benefit or other requirements of this section, and such amendment may be effectuated only by the action of a legislative body that does not convene during the period July 1 through December 31, 1991, the end of the reasonable reliance period (i.e., December 31, 1991) is extended to the date that is the last day of the first legislative session commencing after December 31, 1991. For example, an employer that expects to establish a system covering a group of employees who are currently not covered by its retirement system may be able to treat those employees as members of a retirement system until the last day of the first legislative session commencing after December 31, 1991, if establishment of the retirement system requires legislation which cannot be enacted until that legislative session.

#### Part-time, Seasonal and Temporary Employees

Many comments were received on the rules in the proposed regulations relating to part-time, seasonal and temporary employees. Under the proposed regulations, any benefit that is relied upon to meet the minimum retirement benefit requirement is required to be 100-percent nonforfeitable. The final regulations retain this requirement while making certain significant modifications in response to the concerns of State and local governments.

Several commentators suggested that refundable contributions to a retirement system were a reasonable proxy for the nonforfeitable benefit requirement. These commentators pointed out that adoption of a rule permitting satisfaction of the nonforfeitable benefit requirement through guaranteed distributions to employees upon certain events would enhance parity between defined benefit and defined contribution retirement systems under the regulations. In response to these comments, the final regulations contain a rule under which the benefit of a part-time, seasonal or temporary employee is treated as

nonforfeitable if, on account of separation from service or death, such employee is unconditionally entitled to a single-sum distribution from the retirement system equal to 7.5 percent of the employee's compensation over the period of covered service, plus interest. In addition, if the benefit of a part-time seasonal or temporary employee is nonforfeitable by reason of this rule, then the special service crediting rules contained in the revenue procedure relating to such employees do not apply. A distribution is considered available on account of separation from service if it is available when an employee retires or reaches normal retirement age after separation from service. Thus, there is no requirement that the distribution occur at the time the employee separates from service. Under a special transition rule, a plan meets this nonforfeitable benefit safe harbor if an employee is unconditionally entitled to a single-sum distribution equal to 6 percent of compensation, rather than the usual 7.5 percent, for any period of credited service beginning after July 1, 1991 and ending on the last day of the plan year beginning in 1992.

Several commentators were concerned about the possible discriminatory effect of the nonforfeitable benefit rule and the fact that it applied only to a discrete group of covered employees. They questioned whether the rule, or its effect, might cause a retirement system to fail to meet the nondiscrimination requirements of section 401(a)(4). The nonforfeitable benefit requirement and the disparate vesting schedules that may result will not, in and of themselves, cause a retirement system to fail to meet the nondiscrimination rules of section 401(a)(4). Similarly, a retirement system that adopts a special accrual rule with respect to part-time, seasonal or temporary employees in order to meet the minimum retirement benefit requirement will not fail to meet the nondiscrimination requirements of section 401(a)(4) solely by reason of that accrual rule.

Some commentators questioned whether the nonforfeitable benefit requirement is met if, under the system, the benefit of a part-time, seasonal or temporary employee can be cashed out without the employee's consent upon separation from service. In response to these inquiries, the final regulations provide that in determining whether a benefit is nonforfeitable for purposes of the part-time, seasonal or temporary rule, rules apply that are similar to those contained in section 411(a)(11). Thus, a system may retain the right to cash-out

the benefit of a part-time, seasonal or temporary employee in certain circumstances without the consent of the employee and still meet the nonforfeitable benefit requirement.

Many commentators requested clarification of the definitions of part-time, seasonal and temporary employees for purposes of the nonforfeitable benefit requirement. In response to these comments, the final regulations incorporate several modifications to the definitions. First, many commentators were concerned that the definition of part-time employee (those individuals normally working 20 hours or less per week) did not provide sufficient guidance with respect to certain school teachers whose employment hours were set by hours in the classroom instead of being based upon total hours worked. In response to these comments, the definition of part-time employee is modified in the case of post-secondary school teachers. These employees will not be considered part-time employees if they normally work at least half of the number of classroom hours defined by the post-secondary educational institution as constituting full-time employment.

Several commentators requested that employers be permitted to aggregate an employee's credited service relating to any employer that maintains the same retirement system for purposes of determining whether an employee is a part-time, seasonal or temporary employee. In general, the final regulations adopt this rule.

In the preamble to the proposed regulations, comments were requested on the definition of temporary employee and those instances where possible contract extensions could be considered in determining whether the length of the contractual arrangement between the employer and the employee exceeded two years. Several comments were received expressing the concern that the rule under the proposed regulations would include too many employees with annual contracts but with long histories of service with the employer. In response to these concerns, under the final regulations, one or more possible contract extensions may be considered if there is a significant likelihood that such extensions will occur. Contract extensions are treated as significantly likely to occur if (i) an average of 80 percent of similarly situated employees have been offered an extension in the immediately preceding two years, or (ii) the past contract renewal history of the particular employee, indicates that the employee is not a temporary employee.

### 3. Re-hired Annuitants

The proposed regulations provide that a re-hired annuitant may be treated as a member of a retirement system even if the annuitant does not actually receive any additional accruals or allocation to his or her account during a year and even if the annuitant does not have a total accrued benefit under the system sufficient to satisfy the minimum retirement benefit requirement. For this purpose, a re-hired annuitant is defined as any former participant of a State or local retirement system who has previously retired from service with the current employer and is either in pay status under a retirement system maintained by this employer or has reached normal retirement age under such retirement system. This rule has been retained in the final regulations and, in response to numerous requests, the definition of re-hired annuitant has been expanded to include an employee who previously retired from service with another employer maintaining the same retirement system, provided that prior service was in a position that was covered under such system.

### Coordination with Medicare

Under current law (section 3121(u)), service as an employee of a State or local government entity is generally treated as employment for purposes of the Medicare portion of FICA taxes, despite the general rule in section 3121(b)(7) excluding such service from the definition of employment. This rule applies only in the case of employees hired on or after April 1, 1986. No such grandfather rule exists under new section 3121(b)(7)(F). Thus, service by an employee that is treated as employment by reason of new section 3121(b)(7)(F) must be treated as employment for purposes of both the Social Security and the Medicare portion of FICA taxes, regardless of when the employee was hired. Similarly, if an employee becomes subject to the Medicare portion of FICA taxes solely because of section 3121(b)(7)(F) (i.e., the employee was hired prior to April 1, 1986, but is not a member of a retirement system) and such employee subsequently becomes covered by a retirement system, the employee will cease to be subject to the Medicare portion of FICA taxes.

### Special Analyses

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

the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these proposed regulations is Robin Ehrenberg of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME AT SOURCE

### Adoption of Amendments to the regulations

Accordingly, 26 CFR part 31 is amended as follows:

**Paragraph 1.** The authority citation for part 31 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805 \* \* \* sec. 31.3121(b)(7)-2 also issued under 26 U.S.C. 3121(b)(7)(F).

**Par. 2.** A new § 31.3121(b)(7)-2 is added to read as follows:

#### § 31.3121(b)(7)-2 Service by employees who are not members of a public retirement system.

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 31.3121(b)(7)-2.

§ 31.3121(b)(7)-2 *Service by employees who are not members of a public retirement system.*

- (a) Table of contents.
- (b) Introduction.
- (c) General rule.
  - (1) Inclusion in employment of service by employees who are not members of a retirement system.
  - (2) Treatment of individuals employed in more than one position.
  - (d) Definition of qualified participant.
    - (1) General rule.
    - (2) Special rule for part time, seasonal and temporary employees.
    - (3) Alternative lookback rule.
    - (4) Treatment of former participants.

## (e) Definition of retirement system.

(1) Requirement that system provide retirement-type benefits.

(2) Requirement that system provide minimum level of benefits.

## (f) Transition rules.

(1) Application of qualified participant rules during 1991.

(2) Additional transition rules for plans in existence on November 5, 1990.

(b) *Introduction.* Under section 3121(b)(7)(F), wages of an employee of a State or local government are generally subject to tax under FICA after July 1, 1991, unless the employee is a member of a retirement system maintained by the State or local government entity. This section 31.3121(b)(7)-2 provides rules for determining whether an employee is a "member of a retirement system". These rules generally treat an employee as a member of a retirement system if he or she participates in a system that provides retirement benefits, and has an accrued benefit or receives an allocation under the system that is comparable to the benefits he or she would have or receive under Social Security. In the case of part-time, seasonal and temporary employees, this minimum retirement benefit is required to be nonforfeitable.

(c) *General rule—(1) Inclusion in employment of service by employees who are not members of a retirement system.* Except in the case of service described in sections 3121(b)(7)(F) (i) through (v), the exception from employment under section 3121(b)(7) does not apply to service in the employ of a State or any political subdivision thereof, or of any instrumentality of one or more of the foregoing that is wholly owned thereby, after July 1, 1991, unless the employee is a member of a retirement system of such State, political subdivision or instrumentality at the time the service is performed. An employee is not a member of a retirement system at the time service is performed unless at that time he or she is a qualified participant (as defined in paragraph (d) of this section) in a retirement system that meets the requirements of paragraph (e) of this section with respect to that employee.

(2) *Treatment of individuals employed in more than one position.* Under section 3121(b)(7)(F), whether an employee is a member of a retirement system is determined on an entity-by-entity rather than a position-by-position basis. Thus, if an employee is a member of a retirement system with respect to service he or she performs in one position in the employ of a State, political subdivision or instrumentality thereof, the employee is generally treated as a member of a retirement

system with respect to all service performed for the same State, political subdivision or instrumentality in any other positions. A State is a separate entity from its political subdivisions, and an instrumentality is a separate entity from the State or political subdivision by which it is owned for purposes of this rule. See paragraph (e)(2) of this section, however, for rules relating to service and compensation required to be taken into account in determining whether an employee is a member of a retirement system for purposes of this section. This rule is illustrated by the following examples:

*Example 1.* An individual is employed full-time by a county and is a qualified participant (as defined in paragraph (d) of this section) in its retirement plan with regard to such employment. In addition to this full-time employment, the individual is employed part-time in another position with the same county. The part-time position is not covered by the county retirement plan, however, and neither the service nor the compensation in the part-time position is considered in determining the employee's retirement benefit under the county retirement plan. Nevertheless, if the retirement plan meets the requirements of paragraph (e) of this section with respect to the individual, the exclusion from employment under section 3121(b)(7) applies to both the employee's full-time and part-time service with the county.

*Example 2.* An individual is employed full-time by a State and is a member of its retirement plan. The individual is also employed part-time by a city located in the State, but does not participate in the city's retirement plan. The services of the individual for the city are not excluded from employment under section 3121(b)(7), because the determination of whether services constitute employment for such purposes is made separately with respect to each political subdivision for which services are performed.

(d) *Definition of qualified participant—(1) General rule—(i) Defined benefit retirement systems.* Whether an employee is a qualified participant in a defined benefit retirement system is determined as services are performed. An employee is a qualified participant in a defined benefit retirement system (within the meaning of paragraph (e)(1) of this section) with respect to services performed on a given day if, on that day, he or she is or ever has been an actual participant in the retirement system and, on that day, he or she actually has a total accrued benefit under the retirement system that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section. An employee may not be treated as an actual participant or as actually having an accrued benefit for this purpose to the extent that such participation or

benefit is subject to any conditions (other than vesting), such as a requirement that the employee attain a minimum age, perform a minimum period of service, make an election in order to participate, or be present at the end of the plan year in order to be credited with an accrual, that have not been satisfied. The rules of this paragraph (d)(1)(i) are illustrated by the following examples:

*Example 1.* A State maintains a defined benefit plan that is a retirement system within the meaning of paragraph (e)(1) of this section. Under the terms of the plan, employees in positions covered by the plan must complete 6 months of service before becoming participants. The exception from employment in section 3121(b)(7) does not apply to services of an employee during the employee's 6 months of service prior to his or her initial entry into the plan. The same result occurs even if, upon the satisfaction of this service requirement, the employee is given credit under the plan for all service with the employer (i.e., if service is credited for the 6-month waiting period). This is true even if the employee makes a required contribution in order to gain the retroactive credit. The same result also occurs if the employee can elect to participate in the plan before the end of the 6-month waiting period, but does not elect to do so.

*Example 2.* A political subdivision maintains a defined benefit plan that is a retirement system within the meaning of paragraph (e)(1) of this section. Under the terms of the plan, service during a plan year is not credited for accrual purposes unless a participant has at least 1,000 hours of service during the year. Benefits that accrue only upon satisfaction of this 1,000-hour requirement may not be taken into account in determining whether an employee is a qualified participant in the plan before the 1,000-hour requirement is satisfied.

(ii) *Defined contribution retirement systems.* Whether an employee is a qualified participant in a defined contribution retirement system is determined as services are performed. An employee is a qualified participant in a defined contribution or other individual account retirement system (within the meaning of paragraph (e)(1) of this section) with respect to services performed on a given day if, on that day, he or she has satisfied all conditions (other than vesting) for receiving an allocation to his or her account (exclusive of earnings) that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during any period ending on that day and beginning on or after the beginning of the plan year of the retirement system. This is the case regardless of whether the allocations were made or accrued before the effective date of section

3121(b)(7)(F). This rule is illustrated by the following examples:

*Example 1.* A State-owned hospital maintains a nonelective defined contribution plan that is a retirement system within the meaning of paragraph (e)(1) of this section. Under the terms of the plan, employees must be employed on the last day of a plan year in order to receive any allocation for the year. Employees may not be treated as qualified participants in the plan before the last day of the year.

*Example 2.* Assume the same facts as in *Example 1* except that, under the terms of the plan, an employee who terminates service before the end of a plan year receives a pro rata portion of the allocation he or she would have received at the end of the year, e.g., based on compensation earned since the beginning of the plan year. If the pro rata allocation available on a given day would meet the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation from the beginning of the plan year through that day (or some later day), employees are treated as qualified participants in the plan on that day.

*Example 3.* A political subdivision maintains an elective defined contribution plan that is a retirement system within the meaning of paragraph (e)(1) of this section. The plan has a calendar year plan year and two open seasons—in December and June—when employees can change their contribution elections. In December, an employee elects not to contribute to the plan. In June, the employee elects (beginning July 1) to contribute a uniform percentage of compensation for each pay period to the plan for the remainder of the plan year. The employee is not a qualified participant in the plan during the period January–June, because no allocations are made to the employee's account with respect to compensation during that time, and it is not certain at that time that any allocations will be made. If the level of contributions during the period July–December meets the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during that period, however, the employee is treated as a qualified participant during that period.

*Example 4.* Assume the same facts as in *Example 3*, except that the plan allows participants to cancel their elections in cases of economic hardship. In October, the employee suffers an economic hardship and cancels the election (effective November 1). If the contributions during the period July–October are high enough to meet the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during that period, the employee is treated as a qualified participant during that period. In addition, if the contributions during the period July–October are high enough to meet the requirements for the entire period July–December, the employee is treated as a qualified participant in the plan throughout the period July–December, even though no allocations are made to the employee's account in the last two months of the year. There is no requirement that the period used to determine whether an employee is a qualified participant on a given day remain the same

from day to day, as long as the period begins on or after the beginning of the plan year and ends on the date the determination is being made.

(2) *Special rule for part-time, seasonal and temporary employees—(i) In general.* A part-time, seasonal or temporary employee is generally not a qualified participant on a given day unless any benefit relied upon to meet the requirements of paragraph (d)(1) of this section is 100-percent nonforfeitable on that day. This requirement may be applied solely to the portion of an employee's benefit under the retirement system attributable to compensation and service while an employee is a part-time, seasonal or temporary employee, provided that such service is taken into account with respect to the remaining portion of the benefit for vesting purposes. Rules similar to the rules in section 411(a)(11) are applicable in determining whether a benefit is nonforfeitable. Thus, a benefit does not fail to be nonforfeitable solely because it can be immediately distributed upon separation of service without the consent of the employee, provided that the present value of the benefit does not exceed \$3,500.

(ii) *Treatment of employees entitled to certain distributions upon death or separation from service.* A part-time, seasonal or temporary employee's benefit under a retirement system is considered nonforfeitable within the meaning of paragraph (d)(2)(i) of this section on a given day if on that day the employee is unconditionally entitled under the retirement system to a single-sum distribution on account of death or separation from service of an amount that is at least equal to 7.5 percent of the participant's compensation (within the meaning of paragraph (e)(2)(iii)(B) of this section) for all periods of credited service taken into account in determining whether the employee's benefit under the retirement system meets the minimum retirement benefit requirement of paragraph (e)(2) of this section. An employee will be considered to be unconditionally entitled to a single-sum distribution notwithstanding the fact that the distribution may be forfeitable (in whole or in part) upon a finding of such employee's criminal misconduct. The participant must be entitled to interest on the distributable amount through the date of distribution, at a rate meeting the requirements of paragraph (e)(2)(iii)(C) of this section, as part of the single sum. See paragraph (f)(2)(i)(C) for a transition rule relating to this nonforfeitable benefit safe harbor. The rule of this paragraph (d)(2)(ii) is illustrated by the following example:

*Example.* An employee is required to contribute 7.5 percent of his or her compensation to a State's defined benefit plan each year. The contribution is "picked up" by the employer in accordance with section 414(h). Under the plan, these amounts plus interest accrued since the date each amount was contributed are refundable to the employee in all cases upon the employee's death or separation from service with the employer. If the interest rate meets the requirements of paragraph (e)(2)(iii)(C) of this section, then the employee's benefits under the plan are considered nonforfeitable and thus meet the requirement of paragraph (d)(2)(i) of this section. Of course, the benefit under the plan must still meet the minimum retirement benefit requirement for defined benefit plans of paragraph (e)(2)(ii) of this section.

(iii) *Definitions of part-time, seasonal and temporary employee—(A) Definition of part-time employee.* For purposes of this section, a part-time employee is any employee who normally works 20 hours or less per week. A teacher employed by a post-secondary educational institution (e.g., a community or junior college, post-secondary vocational school, college, university or graduate school) is not considered a part-time employee for purposes of this section if he or she normally has classroom hours of one-half or more of the number of classroom hours designated by the educational institution as constituting full-time employment, provided that such designation is reasonable under all the facts and circumstances. In addition, elected officials and election workers (otherwise described in section 3121(b)(7)(F)(iv) but paid in excess of \$100 annually) are not considered part-time, seasonal or temporary employees for purposes of this section. The rules of this paragraph (d)(2)(iii) are illustrated by the following example:

*Example.* A community college treats a teacher as a full-time employee if the teacher is assigned to work 15 classroom hours per week. A new teacher is assigned to work 8 classroom hours per week. Because the assigned classroom hours of the teacher are at least one-half of the school's definition of full-time teacher, the teacher is not a part-time employee.

(B) *Definition of seasonal employee.* For purposes of this section, a seasonal employee is any employee who normally works on a full-time basis less than 5 months in a year. Thus, for example, individuals who are hired by a political subdivision during the tax return season in order to process incoming returns and work full-time over a 3-month period are seasonal employees.

(C) *Definition of temporary employee.* For purposes of this section, a temporary employee is any employee performing services under a contractual arrangement with the employer of 2 years or less duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement, but only if, under the facts and circumstances, there is a significant likelihood that the employee's contract will be extended. Future contract extensions are considered significantly likely to occur for purposes of this rule if on average 80 percent of similarly situated employees (i.e., those in the same or a similar job classification with expiring employment contracts) have had bona fide offers to renew their contracts in the immediately preceding 2 academic or calendar years. In addition, future contract extensions are considered significantly likely to occur if the employee with respect to whom the determination is being made has a history of contract extensions with respect to his or her current position. An employee is not considered a temporary employee for purposes of this rule solely because he or she is included in a unit of employees covered by a collective bargaining agreement of 2 years or less duration.

(D) *Treatment of employees participating in certain systems.* Whether an employee is a part-time, seasonal or temporary employee with respect to allocations or benefits under a retirement system is generally determined based on service in the position in which the allocations or benefits were earned, and does not take into account service in other positions with the same or different States, political subdivisions or instrumentalities thereof. All of an employee's service in other positions with the same or different States, political subdivisions or instrumentalities thereof may be taken into account for purposes of determining whether an employee is a part-time, seasonal or temporary employee with respect to benefits under the retirement system, however, *Provided that:* The employee's service in the other positions is or was covered by the retirement system; all service aggregated for purposes of determining whether an employee is a part-time, seasonal or temporary employee (and related compensation) is aggregated under the system for all purposes in determining benefits (including vesting); and the employee is treated at least as favorably as a full-time employee under the retirement system for benefit accrual purposes. The rule of this paragraph

(d)(2)(iii)(D) are illustrated by the following example:

*Example.* Assume that an employee works 15 hours per week for a county and 10 hours per week for a municipality, and that both of these political subdivisions contribute to the same state-wide public employee retirement system. Assume further that the employee's service in both positions is aggregated under the system for all purposes in determining benefits (including vesting). If the employee is covered under the retirement system with respect to both positions and is treated for benefit accrual purposes at least as favorably as full-time employees under the retirement system, then the employee is not considered a part-time employee of either the county or the municipality for purposes of the nonforfeitable benefit requirement of paragraph (d)(2)(i) of this section.

(3) *Alternative lookback rule—(i) In general.* An employee may be treated as a qualified participant in a retirement system throughout a calendar year if he or she was a qualified participant in such system (within the meaning of paragraphs (d)(1) and (2) of this section) at the end of the plan year of the system ending in the previous calendar year. This rule is illustrated by the following examples:

*Example 1.* A political subdivision maintains a plan that is a retirement system within the meaning of paragraph (e)(1) of this section. An employee is a qualified participant within the meaning of paragraph (d)(1) of this section in the plan on the last day of the plan year ending on May 31, 1995. If the alternative lookback rule is used to determine FICA liability, no such liability exists with respect to the employee or employer for calendar year 1996 by reason of section 3121(b)(7)(F). The same result would apply if the determination is being made with respect to calendar year 1992 and the lookback year was the plan year ending May 31, 1991, even though that plan year ended before the effective date of section 3121(b)(7)(F).

*Example 2.* A political subdivision maintains an elective defined contribution plan described in section 457(b) of the Code. An employee is eligible to participate in the plan but does not elect to contribute for a plan year. Under the general rule of paragraph (d)(1) of this section, the employee is not a qualified participant in the plan during the plan year because contributions sufficient to meet the minimum retirement benefit requirement of paragraph (e)(2) of this section are not being made. However, if an employee's status as a qualified participant is being determined under the alternative lookback rule, then the employee is a qualified participant for the calendar year in which the determination is being made if he or she was a qualified participant as of the end of the plan year that ended in the previous calendar year.

(ii) *Application in first year of participation.* If the alternative lookback rule is used, an employee who participates in the retirement system

may be treated as a qualified participant on any given day during his or her first plan year of participation in a retirement system (within the meaning of paragraph (e)(1) of this section) if and only if it is reasonable on such day to believe that the employee will be a qualified participant (within the meaning of paragraphs (d)(1) and (2) of this section) on the last day of such plan year. In the case of a defined contribution retirement system, the determination of whether the employee is actually (or is expected to be) a qualified participant at the end of the plan year must take into account all compensation since the commencement of participation. See paragraph (d)(3)(iv) of this section. If this reasonable belief is correct, and the employee is a qualified participant on the last day of his or her first plan year of participation, then the exception from employment in section 3121(b)(7) will apply without regard to section 3121(b)(7)(F) to services of the employee for the balance of the calendar year in which the plan year ends. For purposes of this paragraph (d)(3)(ii), it is not reasonable to assume the establishment of a new plan until such establishment actually occurs. In addition, the rule in this paragraph (d)(3)(ii) may not be used to treat an employee as a qualified participant until the employee actually becomes a participant in the retirement system. In the case of a retirement system that does not permit a new employee to participate until the first day of the first month beginning after the employee's commencement of service, or some earlier date, a new employee who is not a part-time, seasonal or temporary employee may be treated as a qualified participant until such date. This 1-month rule of administrative convenience applies without regard to whether the employer has a reasonable belief that the employee will be a qualified participant. The rules of this paragraph (d)(3)(ii) are illustrated by the following examples:

*Example 1.* A political subdivision maintains a plan that is a retirement system within the meaning of paragraph (e)(1) of this section and uses the alternative lookback rule of this paragraph (d)(3). Under the terms of the plan, service during a plan year is not credited for accrual purposes unless a participant has at least 1,000 hours of service during the year. Assume that an employee becomes a participant. If it is reasonable to believe that the employee will be credited with 1,000 hours of service by the last day of his or her first year of participation and thereby become a qualified participant by reason of accruing a benefit that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section, the services

of the employee are not subject to FICA tax from the date of initial participation until the end of that plan year. If the employee is a qualified participant on the last day of his or her first plan year of participation, then the exception from employment for purposes of FICA will apply to services of the employee for the balance of the calendar year in which the plan year ended.

*Example 2.* Assume the same facts as *Example 1*, except that the employee is a newly hired employee and the plan provides that an employee may not participate until the first day of his or her first full month of employment. Under the 1-month rule of convenience, the employee may be treated as a qualified participant until the first date on which he or she could participate in the plan.

(iii) *Application in last year of participation.* If the alternative lookback rule is used, an employee may be treated as a qualified participant on any given day during his or her last year of participation in a retirement system (within the meaning of paragraph (e)(1) of this section) if and only if it is reasonable to believe on such day that the employee, will be a qualified participant (within the meaning of paragraphs (d)(1) and (2) of this section) on his or her last day of participation. For purposes of this paragraph (d)(3)(iii), an employee's last year of participation means the plan year that the employer reasonably ascertains is the final year of such employee's participation (e.g., where the employee has a scheduled retirement date or where the employer intends to terminate the plan).

(iv) *Special rule for defined contribution retirement systems.* An employee may not be treated as a qualified participant in a defined contribution retirement system under this paragraph (d)(3) if compensation for less than a full plan year or other 12-month period is regularly taken into account in determining allocations to the employee's account for the plan year unless, under all of the facts and circumstances, such arrangement is not a device to avoid the imposition of FICA taxes. For example, an arrangement under which compensation taken into account is limited to the contribution base described in section 3121(x)(1) is not considered a device to avoid FICA taxes by reason of such limitation. See paragraph (e)(2)(iii)(B) of this section for a rule permitting the use of such limitation. This rule is illustrated by the following example:

*Example.* A political subdivision maintains a defined contribution plan that covers all of its full-time employees and is a retirement system within the meaning of paragraph (e)(1) of this section. Under the plan, a portion of each participant's compensation in the final month of every plan year is allocated to the participant's account.

Employees covered under the plan generally may not be treated as qualified participants under the alternative lookback rule for any portion of the calendar year following the year in which such allocation is made.

(v) *Consistency requirement.*

Beginning with calendar year 1992, if the alternative lookback rule is used to determine whether an employee is a qualified participant, it must be used consistently from year to year and with respect to all employees of the State, political subdivision or instrumentality thereof making the determination. If a retirement system is sponsored by more than one State, political subdivision or instrumentality, this consistency requirement applies separately to each plan sponsor.

(4) *Treatment of former participants—*

(i) *In general.* In general, the rules of this paragraph (d) apply equally to former participants who continue to perform service for the same State, political subdivision or instrumentality thereof or who return after a break in service. Thus, for example, a former employee of a political subdivision with a deferred benefit under a defined benefit retirement system maintained by the political subdivision who is reemployed by the political subdivision but does not resume participation in the retirement system, may continue to be a qualified participant in the system after becoming reemployed if his or her total accrued benefit under the system meets the minimum retirement benefit requirement of paragraph (e)(2) of this section (taking into account all periods of service (including current service) required to be taken into account under that paragraph). See also paragraph (e)(2)(v) of this section for situations in which benefits under a retirement system may be taken into account even though they relate to service for another employer.

(ii) *Treatment of re-hired annuitants.*

An employee who is a former participant in a retirement system maintained by a State, political subdivision or instrumentality thereof, who has previously retired from service with the State, political subdivision or instrumentality, and who is either in pay status (i.e., is currently receiving retirement benefits) under the retirement system or has reached normal retirement age under the retirement system, is deemed to be a qualified participant in the retirement system without regard to whether he or she continues to accrue a benefit or whether the distribution of benefits under the retirement system has been suspended pending cessation of services. This rule also applies in the case of an employee who has retired from service with another State, political subdivision or instrumentality thereof

that maintains the same retirement system as the current employer, provided the employee is a former participant in the system by reason of the employee's former employment. Thus, for example, if a teacher retires from service with a school district that participates in a state-wide teachers' retirement system, begins to receive benefits from the system, and later becomes a substitute teacher in another school district that participates in the same state-wide system, the employee is treated as a re-hired annuitant under this paragraph (d)(4)(ii).

(e) *Definition of retirement system—*

(1) *Requirement that system provide retirement-type benefits.* For purposes of section 3121(b)(7)(F), a retirement system includes any pension, annuity, retirement or similar fund or system within the meaning of section 218 of the Social Security Act that is maintained by a State, political subdivision or instrumentality thereof to provide retirement benefits to its employees who are participants. Whether a plan is maintained to provide retirement benefits with respect to an employee is determined under the facts and circumstances of each case. For example, a plan providing only retiree health insurance or other deferred welfare benefits is not considered a retirement system for this purpose. The legal form of the system is generally not relevant. Thus, for example, a retirement system may include a plan described in section 401(a), an annuity plan or contract under section 403 or a plan described in section 457(b) or (f) of the Internal Revenue Code. In addition, the Social Security system is not a retirement system for purposes of section 3121(b)(7)(F) and this section. These rules are illustrated by the following examples:

*Example 1.* Under an employment arrangement, a portion of an employee's compensation is regularly deferred for 5 years. Because a plan that defers the receipt of compensation for a short span of time rather than until retirement is not a plan that provides retirement benefits, this arrangement is not a retirement system for purposes of section 3121(b)(7)(F).

*Example 2.* An individual holds two positions with the same political subdivision. The wages earned in one position are subject to FICA tax pursuant to an agreement (under section 218 of the Social Security Act) between the Secretary of Health and Human Services and the State in which the political subdivision is located. Because the Social Security system is not a retirement system for purposes of section 3121(b)(7)(F), the exception from employment in section 3121(b)(7) does not apply to service in the other position unless the employee is

otherwise a member of a retirement system of such political subdivision.

(2) *Requirement that system provide minimum level of benefits*—(i) *In general.* A pension, annuity, retirement or similar fund or system is not a retirement system with respect to an employee unless it provides a retirement benefit to the employee that is comparable to the benefit provided under the Old-Age portion of the Old-Age, Survivor and Disability Insurance program of Social Security. Whether a retirement system meets this requirement is generally determined on an individual-by-individual basis. Thus, for example, a pension plan that is not a retirement system with respect to an employee may nevertheless be a retirement system with respect to other employees covered by the system.

(ii) *Defined benefit retirement systems.* A defined benefit retirement system maintained by a State, political subdivision or instrumentality thereof meets the requirements of this paragraph (e)(2) with respect to an employee on a given day if and only if, on that day, the employee has an accrued benefit under the system that entitles the employee to an annual benefit commencing on or before his or her Social Security retirement age that is at least equal to the annual Primary Insurance Amount the employee would have under Social Security. For this purpose, the Primary Insurance Amount an individual would have under Social Security is determined as it would be under the Social Security Act if the employee had been covered under Social Security for all periods of service with the State, political subdivision or instrumentality, had never performed service for any other employer, and had been fully insured within the meaning of section 214(a) of the Social Security Act, except that all periods of service with the State, political subdivision or instrumentality must be taken into account (i.e., without reduction for low-earning years).

(iii) *Defined contribution retirement systems*—(A) *In general.* A defined contribution retirement system maintained by a State, political subdivision or instrumentality thereof meets the requirements of paragraph (e)(2)(i) of this section with respect to an employee if and only if allocations to the employee's account (not including earnings) for a period are at least 7.5 percent of the employee's compensation for service for the State, political subdivision or instrumentality during the period. Matching contributions by the employer may be taken into account for this purpose.

(B) *Definition of compensation.* The definition of compensation used in determining whether a defined contribution retirement system meets the minimum retirement benefit requirement must generally be no less inclusive than the definition of the employee's base pay as designated by the employer or the retirement system, provided such designation is reasonable under all the facts and circumstances. Thus, for example, a defined contribution retirement system will not fail to meet this requirement merely because it disregards for all purposes one or more of the following: overtime pay, bonuses, or single-sum amounts received on account of death or separation from service under a bona fide vacation, compensatory time or sick pay plan, or under severance pay plans. Furthermore, any compensation remaining after such amounts are disregarded that is in excess of the contribution base described in section 3121(x)(1) at the beginning of the plan year may also be disregarded. The rules of this paragraph are illustrated by the following example:

*Example.* A political subdivision maintains an elective defined contribution plan that is a retirement system within the meaning of paragraph (e)(1) of this section. The plan has a calendar year plan year. In 1995, an employee contributes to the plan at a rate of 7.5 percent of base pay. Assume that the employee will reach the maximum contribution base described in section 3121(x)(1) in October of 1995. The employee is a qualified participant in the plan for all of the 1995 plan year without regard to whether the employee ceases to participate at any time after reaching the maximum contribution base.

(C) *Reasonable interest rate requirement.* A defined contribution retirement system does not satisfy this paragraph (e)(2) with respect to an employee unless the employee's account is credited with earnings at a rate that is reasonable under all the facts and circumstances, or employees' accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual earnings on the trust fund. Whether the interest rate with which an employee's account is credited is reasonable is determined after reducing the rate to adjust for the payment of any administrative expenses. The rule of this paragraph (e)(2)(iii)(C) is illustrated by the following example:

*Example.* A political subdivision maintains a defined contribution plan described in section 457(b). Under the plan, the accounts of participants are credited annually on the basis of a variable interest rate formula determined as of the beginning of the plan

year. The formula requires an interest rate (after adjustment for administrative expense payments) equal to 100 percent of the Applicable Federal Rate for long-term debt instruments. This interest rate constitutes a reasonable rate of interest.

(iv) *Treatment of employees employed in more than one position with the same entity.* All service and compensation of an employee with respect to his or her employment with a State, political subdivision or instrumentality thereof must generally be considered in determining whether a benefit meets the requirement of this paragraph (e)(2). However, for individuals employed simultaneously in multiple positions with the same entity, this determination may (but is not required to) be made solely by reference to the service and compensation related to a single position of the employee with the State, political subdivision or instrumentality thereof making the determination, provided that the position is not a part-time, seasonal or temporary position.

(v) *Treatment of employees participating in certain systems.* In general, only compensation from and service for the State, political subdivision or instrumentality thereof that employs the employee (and the allocations or benefits related to such compensation or service) on a given day are considered in determining whether the employee's benefit under the retirement system on that day meets the requirements of this paragraph (e)(2), even if the employee has other allocations or benefits under the same retirement system from service with another State, political subdivision or instrumentality thereof. However, an employee's total allocations or benefits under a retirement system maintained by multiple States, political subdivisions or instrumentalities thereof (including the current employer) may be taken into account if:

(A) The compensation and service on which the additional allocations or benefits are based are also taken into account in determining whether the employee's allocations or benefits satisfy the minimum retirement benefit requirement;

(B) The retirement system takes all service and compensation of the employee in all positions covered by the system into account for all benefit determination purposes; and

(C) If the employee is a part-time, seasonal or temporary employee, he or she is treated under the plan for benefit accrual purposes in as favorable a manner as a full-time employee participating in the system.

(vi) *Additional testing methods.* Additional testing methods may be designated by the Commissioner in revenue procedures, revenue rulings, notices or other documents of general applicability.

(f) *Transition rules—(1) Application of qualified participant rules during 1991—(i) In general.* An employee may be treated as a qualified participant in a retirement system (within the meaning of paragraph (e)(1) of this section) on a given day during the period July 1 through December 31, 1991, if it is reasonable on that day to believe that he or she will be a qualified participant under the general rule in paragraphs (d)(1) and (2) of this section by January 1, 1992 (taking into account only service and compensation on or after such date). For purposes of this paragraph (f)(1)(i), given the facts and circumstances of a particular case, it may be reasonable to assume that the terms of a plan will be changed or that a new retirement system will be established by the end of calendar year 1991, as long as affirmative steps have been taken to accomplish this result.

(ii) *Extension of reliance period if legislative action required.* If a plan amendment or other action is necessary in order to treat an employee as a member of a retirement system for purposes of this section, such amendment or other action may only be taken by a legislative body that does not convene during the period July 1, 1991, through December 31, 1991, and the other requirements of paragraph (f)(1)(i) of this section are met, the end of the reasonable reliance period (including the rule that service and compensation prior to that date may be disregarded) provided under paragraph (f)(1)(i) of this section is extended from December 31, 1991, to the date that is the last day of the first legislative session commencing after December 31, 1991. These rules are illustrated by the following examples:

*Example 1.* A State maintains a defined benefit plan that meets the requirements of paragraph (e) of this section. The plan does not cover a particular class of full-time employees as of July 1, 1991. However, in light of the enactment of section 3121(b)(7)(F), State officials administering the plan for the State intend to request that the legislature amend the State statute to include that class of employees in the existing plan and otherwise to modify the terms of the plan to meet the requirements of section 3121(b)(7)(F) and this section. The State legislature meets from January through March each year, and legislative action is required to expand coverage under the plan. State officials administering the plan have publicized the proposed amendment providing for the addition of these employees to the plan. Under the transition rule for 1991, if it is

reasonable to believe that the legislature will pass this bill in the 1992 session, service by the employees who will be covered under the plan by reason of the amendment is not treated as employment by reason of section 3121(b)(7)(F) during the period prior to April 1, 1992. This is true regardless of whether the plan provides retroactive coverage for the period July 1, 1991 through March 31, 1992.

*Example 2.* Assume the same facts as in *Example 1*, except that legislative action is not required in order to expand coverage under the plan, and that publication of the proposed change to the plan occurs in 1991. Assume further that coverage is expanded under the plan to include the new class of full-time employees as of April 1, 1992. Despite this action, in this situation the service by those employees during the period January 1, 1992 through March 31, 1992 is not excluded from "employment" under section 3121(b)(7)(F), and wages for that period are generally subject to FICA taxes even if the plan provides retroactive coverage for any portion of the period July 1, 1991 to March 31, 1992.

(2) *Additional transition rules for plans in existence on November 5, 1990—(i) Application of minimum retirement benefit requirement to defined benefit retirement systems in plan years beginning before 1993—(A) In general.* A defined benefit retirement system maintained by a State, political subdivision or instrumentality thereof on November 5, 1990, is not subject to the minimum retirement benefit requirement of paragraph (e)(2) of this section for any plan year beginning before January 1, 1993, with respect to individuals who were actually covered under the system on November 5, 1990. Such a retirement system is also not subject to the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to an employee who becomes a participant after November 5, 1990, if he or she is employed in a position that was covered under the retirement system on November 5, 1990, without regard to whether such coverage was mandatory or elective. A retirement system is not described in this paragraph (f)(2)(i)(A) if there has been a material decrease in the level of retirement benefits under the retirement system pursuant to an amendment adopted subsequent to November 5, 1990. Whether such a material decrease in benefits has occurred is determined under the facts and circumstances of each case. A decrease in benefits is not material to the extent that it does not decrease the benefit payable at normal retirement age. These rules are illustrated by the following examples:

*Example 1.* The retirement formula under a retirement plan that was in existence on November 5, 1990, is amended to use career average compensation instead of a high 3-

year average, without any increase in the benefit formula. This amendment constitutes a material decrease in the level of benefit under the retirement plan. Therefore, the retirement plan is subject to the minimum retirement benefit requirement for the plan year for which the amendment is effective and for all succeeding plan years.

*Example 2.* A defined benefit retirement plan that was in existence on November 5, 1990, is subsequently amended to include part-time employees. Previously, this class of employees was not covered under the plan either on a mandatory or on an elective basis. The plan is subject to the minimum retirement benefit requirement with respect to the part-time employees because this class of employees was previously excluded from coverage under the retirement plan. Of course, the nonforfeitable benefit rule applies to the benefit relied upon to meet the minimum retirement benefit requirement with respect to any part-time, seasonal or temporary employee covered during this period.

(B) *Treatment in plan years beginning after 1992 of benefits accrued during previous plan years.* The general rule that a defined benefit retirement system meets the minimum retirement benefit requirement on the basis of total benefits and service accrued to date is modified for plans in existence on November 5, 1990. If a defined benefit retirement system in existence on November 5, 1990, does not meet the minimum retirement benefit requirement solely because the benefits accrued for an employee (with respect to whom the system is entitled to relief under paragraph (f)(2)(i)(A) of this section) as of the last day of the last plan year beginning before January 1, 1993, do not meet the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to service and compensation before that time, then the retirement system will be deemed to comply with the requirements of paragraph (e)(2) of this section if the future service accruals would comply with the requirement of paragraph (e)(2) of this section. If retirement benefits under a retirement system in existence on November 5, 1990 are materially decreased within the meaning of paragraph (f)(2)(i)(A) of this section, then the date the decrease is effective is substituted for January 1, 1993 for purposes of this paragraph. The rule of this paragraph (f)(2)(i)(B) is illustrated by the following example:

*Example.* A defined benefit plan maintained by a State was in existence on November 5, 1990. It provides a retirement benefit on the last day of the 1992 plan year that is insufficient to meet the requirements of paragraph (e)(2) of this section based on employees' total service and compensation with the State at that time. The plan will

nevertheless meet the requirements of paragraph (e)(2) of this section if it is amended to provide benefits sufficient to meet the requirements of paragraph (e)(2) of this section based on employees' service and compensation in plan years beginning after December 31, 1992.

(C) *Treatment of part-time, seasonal or temporary employees.* A defined benefit retirement system is not exempt from the minimum retirement benefit requirement with respect to a part-time, seasonal or temporary employee during the transition period provided in paragraph (f)(2)(i)(A) of this section unless any retirement benefit provided to the employee is 100-percent nonforfeitable within the meaning of paragraph (d)(2) of this section. In determining whether the benefit is nonforfeitable, the special rule in paragraph (d)(2)(ii) of this section is modified in two respects during the transition period: first, the percentage of compensation required to be available for distribution is reduced from 7.5 percent to 6 percent; and second, the period of service with respect to which compensation must be determined is modified to include all periods of participation by the employee in the system since July 1, 1991.

(ii) *Application of minimum retirement benefit requirement to defined contribution retirement systems in plan years beginning before 1993.* A defined contribution retirement system maintained by a State, political subdivision or instrumentality thereof on November 5, 1990, meets the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to an employee for any plan year beginning before January 1, 1993, if mandatory allocations to the employee's account (not including earnings) for a period are at least 6 percent (rather than 7.5 percent) of the employee's compensation for service to the State, political subdivision or instrumentality during the period, and the plan otherwise meets the requirements of paragraph (e)(2)(iii) of this section. This transition rule is only available with respect to an employee who is actually covered under the system on November 5, 1990, and to an employee who becomes a participant after November 5, 1990, if he or she is employed in a position that was covered under the retirement system on November 5, 1990, without regard to whether such coverage was mandatory or elective. In addition, this transition rule is not available with respect to a part-time, seasonal or temporary employee unless the mandatory allocation required under this paragraph (f)(2)(ii) is 100-percent nonforfeitable within the meaning of

paragraph (d)(2) of this section. A retirement system is not described in this paragraph (f)(2)(ii) if there has been a material decrease in the level of retirement benefits under the retirement system pursuant to an amendment adopted subsequent to November 5, 1990. Whether such a material decrease in benefits has occurred is determined under all the facts and circumstances.

(iii) *Application of qualified participant rules.* A participant with respect to whom relief is granted under paragraph (f)(2)(i)(A) of this section may be treated as a qualified participant in the defined benefit retirement system on a given day if, on that day, he or she is actually a participant in the retirement system, and, on that day, it is reasonable to believe that the participant will actually accrue a benefit before the end of the plan year of such retirement system in which the determination is made. A participant is not treated as accruing a benefit for purposes of this rule if his or her accrued benefits increase solely as a result of an increase in compensation. However, an employee is treated as a qualified participant for a plan year if the employee meets all of the applicable conditions for accruing the maximum current benefit for such year but fails to accrue a benefit solely because of a uniformly applicable benefit limit under the plan. In addition, an employee may be treated as a qualified participant in the system on a given day if the employee is a re-hired annuitant within the meaning of paragraph (d)(4)(ii) of this section. This rule is illustrated by the following example:

*Example.* A political subdivision maintains a defined benefit plan that is a retirement system within the meaning of paragraph (e)(1) of this section but does not meet the requirements of paragraph (e)(2) of this section. If the plan is not subject to the minimum retirement benefit requirement, an employee who is a participant in the retirement plan as of the end of a plan year beginning before January 1, 1993, and may reasonably be expected to accrue a benefit under the plan by the end of such plan year may be treated as a qualified participant in the plan throughout the plan year regardless of the actual amount of the accrual.

**Fred T. Goldberg, Jr.,**

*Commissioner of Internal Revenue.*

Approved June 13, 1991.

**Kenneth W. Gideon,**

*Assistant Secretary of the Treasury.*

[FR Doc. 91-15380 Filed 6-27-91; 8:45 am]

BILLING CODE 4830-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1610

#### Availability of Records

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC) is revising its Freedom of Information Act (FOIA) regulations to include procedures for obtaining records maintained under the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and predisclosure notification procedures for confidential commercial information. The Commission also is making several nonsubstantive administrative changes.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathy Oram, Senior Attorney, or Maia Caplan, Attorney, (202) 663-4669 (voice) or (202) 663-7026 (TDD).

Copies of this 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 Commission published a notice of proposed rulemaking on March 14, 1991, proposing to revise its regulations under the Freedom of Information Act, 5 U.S.C. 552. 56 FR 10847. The proposed rule amended the regulation to encompass records maintained pursuant to the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, added a new § 1610.19 on predisclosure notification procedures for confidential commercial information, and made a number of other clarifying changes. The Commission received one comment on the proposed amendments. In response to concerns voiced by the commenter, § 1610.19, as initially proposed, is hereby modified in two respects. Instead of uniformly requiring certification of confidentiality, the regulations seek certification "whenever possible." Additionally, the section now provides the Commission with discretion to select, on a case-by-case basis, deadlines for submitters to respond to Commission notices of requests for confidential commercial information; this will allow designation of response dates in light of the quantity of

documents to be reviewed and any other relevant circumstances.

We have also made minor editorial changes to increase clarity and to insure consistency, clarified two statutory citations and changed three office addresses. In all other respects, the Commission is adopting the proposed amendments to part 1610 as a final rule.

For the Commission.

**Evan J. Kemp, Jr.,**  
Chairman.

Accordingly, 29 CFR part 1610 is amended as follows.

1. The authority citation for 29 CFR part 1610 is revised to read as follows:

**Authority:** 42 U.S.C. 2000e-12(a), 5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 99-570; for § 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 9701.

2. Section 1610.4 is amended by revising paragraph (c) to read as follows:

**§ 1610.4 Public reference facilities and current index.**

\* \* \* \* \*

(c) The Commission's field offices are:

Albuquerque Area Office (Phoenix District), Western Bank Building, suite 1105, 505 Marquette NW., Albuquerque, New Mexico 87102-2189  
 Atlanta District Office, Citizens Trust Bank Building, Suite 1100, 75 Piedmont Avenue NE., Atlanta, Georgia 30335  
 Baltimore District Office, 111 Market Place, suite 4000, Baltimore, Maryland 21202  
 Birmingham District Office, 1900 3rd Avenue, North, suite 101, Birmingham, Alabama 35203-2397  
 Boston Area Office (New York District) 1 Congress Street, suite 100, Boston, Massachusetts 02114  
 Buffalo Local Office (New York District), 28 Church Street, room 310, Buffalo, New York 14202  
 Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212  
 Chicago District Office, Federal Building, room 930A, 536 South Clark Street, Chicago, Illinois 60605  
 Cincinnati Area Office (Cleveland District), 550 Main Street, room 7015, Cincinnati, Ohio 45202  
 Cleveland District Office, 1375 Euclid Avenue, room 600, Cleveland, Ohio 44115  
 Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247  
 Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203  
 Detroit District Office, 477 Michigan Avenue, room 1540, Detroit, Michigan 48226  
 El Paso Area Office (San Antonio District), The Commons, Building C, suite 100, 4171 North Mesa Street, El Paso, Texas 77902  
 Fresno Local Office (San Francisco District), 1313 P Street, suite 103, Fresno, California 93721  
 Greensboro Local Office (Charlotte District), 324 West Market, room B-27, P.O. Box 3363 Greensboro, North Carolina 27402

Greenville Local Office (Charlotte District), 300 East Washington Street, suite B41, Greenville, South Carolina 29601  
 Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, suite 404, P.O. Box 59082, Honolulu, Hawaii 96813  
 Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002  
 Indianapolis District Office, 46 East Ohio Street, room 456, Indianapolis, Indiana 46204  
 Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201  
 Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106  
 Little Rock Area Office (Memphis District), 320 West Capitol Avenue, suite 621, Little Rock, Arkansas 72201  
 Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, California 90010  
 Louisville Area Office (Indianapolis District), 600 Martin Luther King Jr. Place, suite 272, Louisville, Kentucky 40202  
 Memphis District Office, 1407 Union Avenue, suite 621, Memphis, Tennessee 38104  
 Miami District Office, 1 Northeast First Street, 8th Floor, Miami, Florida 33132  
 Milwaukee District Office, 310 West Wisconsin Avenue, suite 800, Milwaukee, Wisconsin 53203  
 Minneapolis Local Office (Milwaukee District), 220 Second Street South, room 108, Minneapolis, Minnesota 55401-2141  
 Nashville Area Office (Memphis District), 50 Vantage Way, suite 202, Nashville, Tennessee 37228  
 Newark Area Office (Philadelphia District), 60 Park Place, room 301, Newark, New Jersey 07102  
 New Orleans District Office, 701 Loyola Avenue, suite 600, New Orleans, Louisiana 70113  
 New York District Office, 90 Church Street, room 1501, New York, New York 10007  
 Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510  
 Oakland Local Office (San Francisco District), 1333 Broadway, room 430, Oakland, California 94612  
 Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102  
 Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102  
 Phoenix District Office, 4520 North Central Avenue, suite 300, Phoenix, Arizona 85012-1848  
 Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, room 2038-A, Pittsburgh, Pennsylvania 15222  
 Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608-2129  
 Richmond Area Office (Baltimore District), 3600 West Broad Street, room 229, Richmond, Virginia 23230

San Antonio District Office, 5410 Fredericksburg Road, suite 200, San Antonio, Texas 78229  
 San Diego Local Office (Los Angeles District), 880 Front Street, room 4S-21, San Diego, California 92188  
 San Francisco District Office, 901 Market Street, suite 500, San Francisco, California 94103  
 San Jose Local Office (San Francisco District), 96 North 3rd Street, San Jose, California 95112  
 Savannah Local Office, 10 Whitaker Street, suite B, Savannah, Georgia 31401  
 Seattle District Office, 2815 Second Avenue, suite 500, Seattle, Washington 98121  
 St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63018  
 Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602  
 Washington Field Office, 1400 L Street NW., suite 200, Washington, DC, suite 20005.

**§ 1610.5 [Amended]**

3. Section 1610.5 is amended by removing paragraph (d).

4. Section 1610.7 is amended by revising (a) to read as follows:

**§ 1610.7 Where to make request; form.**

(a) Requests for the following types of records shall be submitted to the regional attorney for the pertinent district, area or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office at the address listed in § 1610.4(c):

- (1) Information about current or former employees of a field office;
- (2) Existing non-confidential statistical data related to the case processing of a field office;
- (3) Agreements between the Commission and state or local fair employment agencies operating within the jurisdiction of a field office; or
- (4) Materials in field office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); or, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

\* \* \* \* \*

**§§ 1610.7-1610.9, 1610.13 and 1610.14 [Amended]**

5. Sections 1610.7, 1610.8, 1610.9, 1610.13, and 1610.14 are amended by removing the words "Deputy Legal Counsel" and adding, in their place, the words "Legal Counsel."

6. Section 1610.10 is amended by revising paragraphs (a) and (b) as follows:

**§ 1610.10 Responses: form and content.**

(a) Once a requested record is identified and available, the requester will be notified of when and where the record will be made available and the cost assessed for processing the request. Fees for processing requests will be determined in accordance with the schedule set forth in § 1610.15. Checks shall be made payable to the Treasurer of the United States.

(b) A reply denying a written request for a record shall be in writing, signed by the Legal Counsel's designee, or the appropriate regional attorney, and shall include:

- (1) His or her name and title;
- (2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9(a), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A statement that the denial may be appealed to the Legal Counsel within 30 days of receipt of the denial or partial denial.

\* \* \* \* \*

**§§ 1610.8, 1610.9 and 1610.11 [Amended]**

7. Section 1610.8, 1610.9 and 1610.11 are amended by removing the words "Deputy Legal Counsel or designee" and replacing them with "Legal Counsel's designee."

8. Section 1610.11 is amended by revising the title and adding a new paragraph (f) as follows:

**§ 1610.11 Appeals to the Legal Counsel from initial denials.**

\* \* \* \* \*

(f) In the event that the Commission terminates its proceedings on a charge after the regional attorney denies a request for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded to the appropriate Regional Attorney for redetermination. The requester retains a right to appeal to the Legal Counsel from the decision on remand.

9. Section 1610.17 is amended as follows:

(a) Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h).

(b) Paragraph (f) is added to read as follows:

**§ 1610.17 Exemptions.**

\* \* \* \* \*

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) explicitly adopts the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in section 706 and 709 of title VII as outlined in paragraph (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act.

\* \* \* \* \*

10. Section 1610.18 is revised to read as follows:

**§ 1610.18 Information to be disclosed.**

The Commission will provide the following information to the public:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provide that such tabulations: Were previously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in § 1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and state or local agencies charged with the administration of state or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing information that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to

filing suit against respondents until such litigation is commenced.

**§ 1610.21 [Redesignate from § 1610.20]**

11. Section 1610.20 is redesignated § 1610.21.

**§ 1610.20 [Redesignated from § 1610.19]**

12. Section 1610.19 is redesignated § 1610.20.

13. Section 1610.19 is added to read as follows:

**§ 1610.19 Predisclosure Notification Procedures for Confidential Commercial Information.**

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) "Confidential commercial information" refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) Whenever possible, include a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) Expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

(d) *Opportunity of submitter to object.* When notification is made pursuant to paragraph (b) of this section, the Commission shall afford the submitter a minimum of five working days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided a minimum of three working days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

[FR Doc. 91-15396 Filed 6-27-91; 8:45 am]

BILLING CODE 6570-06-M

## 29 CFR Part 1611

### Privacy Act of 1974

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission is revising its

regulations at 29 CFR part 1611, which implement the Privacy Act of 1974. These regulations set forth the procedures whereby individuals can request information about, access to, or amendments of records pertaining to them that are contained in a system of records established or maintained by the Commission. They also set forth the procedures to be followed in processing those requests. The amendments update the regulations, delegate authority, clarify the appeal process and exempt two EEOC systems of records from some of the Act's requirements.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Acting Associate Legal Counsel, Thomas J. Schlageter, Acting Assistant Legal Counsel or Kathleen Oram, Senior Attorney, at (202) 663-4670 (voice) or (202) 663-7026 (TDD).

Copies of this 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:** Pursuant to section (f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), each agency that maintains a system of records must promulgate rules in accordance with the Administrative Procedure Act, 5 U.S.C. 553, establishing procedures and requirements for carrying out the provisions of the Privacy Act. The Commission published a notice of proposed rulemaking on March 14, 1991, proposing to amend its Privacy Act regulations to update them and to make other administrative and editorial changes. 56 FR 10850.

The Commission proposed to exempt government-wide system EEOC/GOVT-1 from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act and to expand the existing exemption for system EEOC-1 to include exemption from sections (e)(4)(G) and (e)(4)(I) of the Privacy Act in order to parallel the exemption for system EEOC-3. It also proposed to delegate authority for processing appeals under the Privacy Act from the Chairman of the Commission to the Legal Counsel or the Legal Counsel's designee; to clarify the procedures for requests and appeals pertaining to records maintained in system EEOC/GOVT-1, EEOC's only government-wide system of records; to add the locations of EEOC maintained records covered by General Services Administration, Merit Systems Protection Board, Office of

Government Ethics and Department of Labor government-wide systems and provide information regarding how and where to appeal denials under those systems; and to change the charge for copying of documents from \$.05 per page to \$.15 per page to conform with the Commission's Freedom of Information Act regulation, 29 CFR 1610.15.

We did not receive any comments on the proposed changes. This final rule, therefore, adopts the amendments proposed in the notice of proposed rulemaking without change.

### List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Evan J. Kemp, Jr.,  
Chairman.

Accordingly, 29 CFR part 1611 is amended as follows:

### PART 1611—PRIVACY ACT REGULATIONS

1. The citation authority for part 1611 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

2. Section 1611.1 is revised to read as follows:

#### § 1611.1 Purpose and scope.

This part contains the regulations of the Equal Employment Opportunity Commission (the Commission) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Commission under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Commission. All records contained in system EEOC/GOVT-1, including those maintained by other agencies, are subject to the Commission's Privacy Act regulations. Requests for access to, an accounting of disclosures for, or amendment of records in EEOC/GOVT-1 must be processed by agency personnel in accordance with this part. Commission records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency,

an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Commission offices as indicated in § 1611.3(b).

3. Section 1611.3 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1611.3 Procedures for requests pertaining to individual records in a record system.**

(a) Any person who wishes to be notified if a system of records maintained by the Commission contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the **Federal Register**. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice; and

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail.

(b) Requests pertaining to records contained in a system of records established by the Commission and for which the Commission has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Commission records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT-1 (General Personnel Records), OPM/GOVT-2 (Employee Performance File System Records), OPM/GOVT-3 (Records of Adverse Actions and Actions Based on Unacceptable Performance), OPM/GOVT-5 (Recruiting, Examining and Placement Records), OPM/GOVT-6 (Personnel Research and Test Validation Records), OPM/GOVT-9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT-10 (Employee Medical File System Records) and DOL/ESA-13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), to the Director of Personnel Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507;

(2) For systems OGE/GOVT-1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT-2 (Confidential Statements of Employment and Financial Interests) and MSPB/GOVT-1 (Appeal and Case Records), to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507;

(3) For system OPM/GOVT-7 (Applicant Race, Sex, National Origin, and Disability Status Records), to the Director of the Office of Equal Employment Opportunity, EEOC, 1801 L Street, NW., Washington, DC 20507;

(4) For systems GSA/GOVT-3 (Travel Charge Card Program) and CSA/GOVT-4 (Contracted Travel Services Program) to the Director of Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

\* \* \* \* \*

4. Section 1611.5 is amended as follows:

(a) Paragraph (a)(5) is amended by removing the words "or § 1611.14."

(b) Paragraphs (c) and (d) are revised to read as follows:

**§ 1611.5 Disclosure of requested information to individuals.**

\* \* \* \* \*

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal the denial. If the request pertains to a system of records for which the Commission has published a system notice, any appeal must be submitted in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a government-wide system of records any appeal should be in writing, identified as a Privacy Act appeal and submitted as follows:

(1) For systems established by OPM and for which OPM has published a system notice, to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, OPM, 1900 E Street, NW., Washington, DC 20415. The OPM Privacy Act regulations, 5 CFR 297.207, shall govern such appeals.

(2) For systems established by OGE and for which OGE has published a system notice, to the Privacy Act Officer, Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917. The OGE Privacy Act regulations, 5 CFR part 2606, shall govern such appeals.

(3) For the system established by MSPB and for which MSPB has published a system notice, to the Deputy

Executive Director for Management, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. The MSPB Privacy Act regulations, 5 CFR part 1205, shall govern such appeals.

(4) For systems established by GSA and for which GSA has published a system notice, to GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. The GSA Privacy Act regulations, 41 CFR 105-64.301-5, shall govern such appeals.

(5) For the system established by DOL and for which DOL has published a system notice, to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The DOL Privacy Act regulations, 29 CFR 70a.9, shall govern such appeals.

(d) In the event that access to a record is denied on appeal by the Legal Counsel or the Legal Counsel's designee, the requestor shall be advised of his or her right to bring a civil action in federal district court for review of the denial in accordance with 5 U.S.C. 552a(g).

\* \* \* \* \*

6. Section 1611.7(c) is amended to remove the words "Civil Service Commission's" and add, in their place, the word "OPM's".

7. Section 1611.8 is amended as follows:

(a) Paragraph (a)(2) is amended by removing the word "Chairman" and adding, in its place, the words "Legal Counsel".

(b) Paragraphs (d) and (e) are revised to read as follows:

**§ 1611.8 Agency review of request for correction or amendment to record.**

\* \* \* \* \*

(d) In the event that the Commission receives a notice of correction or amendment from another agency that pertains to records maintained by the Commission, the Commission shall make the appropriate correction or amendment to its records and comply with paragraph (a)(1)(iii) of this section.

(e) Requests for amendment or correction of records maintained in the government-wide systems of records listed in § 1611.5(c) shall be governed by the appropriate agency's regulations cited in that paragraph. Requests for amendment or correction of records maintained by other agencies in system EEOC/GOVT-1 shall be governed by the Commission's regulations in this part.

9. Section 1611.9 is revised to read as follows:

**§ 1611.9 Appeal of initial adverse agency determination on correction or amendment.**

(a) If a request for correction or amendment of a record in a system of records established by EEOC is denied, the requester may appeal the determination in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a record that is contained in the government-wide systems of records listed in § 1611.5(c), an appeal must be made in accordance with the appropriate agency's regulations cited in that paragraph.

(b) The Legal Counsel or the Legal Counsel's designee shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 working days from the date on which the individual requests a review, unless for good cause shown, this 30-day period is extended and the requester is notified of the reasons for the extension and of the estimated date on which a final determination will be made. Such extensions will be used only in exceptional circumstances and will not normally exceed 30 working days.

(c) In conducting the review of an appeal submitted under paragraph (a) of this section, the Legal Counsel or the Legal Counsel's designee shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) If the Legal Counsel or the Legal Counsel's designee determines to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall so inform the requester, and the appropriate Commission official shall comply with the procedures set forth in § 1611.8(a)(1)(ii) and (iii).

(e) If the Legal Counsel or the Legal Counsel's designee determines in accordance with paragraphs (b) and (c) of this section not to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall inform the requester:

(1) Of this determination and the reasons for it;

(2) Of the requester's right to file a concise statement of reasons for disagreement with the determination of the Legal Counsel or the Legal Counsel's designee;

(3) That such statements of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with (if the Legal Counsel or Legal Counsel's designee deems it appropriate) a brief statement summarizing the Legal Counsel or Legal Counsel's designee's reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement together with (if the Legal Counsel or Legal Counsel's designee deems it appropriate) a brief statement of the Legal Counsel or Legal Counsel's designee's reasons for refusing to amend the record, to the extent that an accounting of disclosure is maintained under 5 U.S.C. 552a(c); and

(5) Of the requester's right to file a civil action in federal district court to seek a review of the determination of the Legal Counsel or the Legal Counsel's designee in accordance with 5 U.S.C. 552a(g).

(f) The Legal Counsel or the Legal Counsel's designee shall ensure that any statements of disagreement submitted by a requestor are made available or distributed in accordance with paragraphs (e) (3) and (4) of this section.

**§ 1611.11 [Amended]**

10. Section 1611.11(a)(1) is amended to remove the words "copies made by photocopy device or otherwise (per page), \$.05." and add, in their place, the words "photocopies (per page), \$.15."

**§ 1611.13 [Removed]**

11. Section 1611.13 is removed.

12. Section 1611.14 is redesignated as § 1611.13 and revised to read as follows:

**§ 1611.13 Specific exemptions.**

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC-1 (Age and Equal Pay Act Discrimination Case Files), EEOC-3 (Title VII and Americans With Disabilities Act Discrimination Case Files) and EEOC/GOVT-1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other federal agencies in the course of investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other

agencies for these provisions of the Act to apply to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge or complaint, and the general nature of the information contained in it.

(c) Subject individuals of the files in each of these systems have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC-3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT-1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1613.220.

(d) Many of the records contained in system EEOC/GOVT-1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminating employer would undermine the investigatory process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these three systems from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

[FR Doc. 91-15397 Filed 6-28-91; 8:45 am]

BILLIONG CODE 6570-01-M

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**32 CFR Part 505**

**Privacy Act of 1974; Implementation**

**AGENCY:** Office, Director of Information Systems for command, Control, Communications and Computers, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is amending its rule for administering the Privacy Act by permitting Access and Amendment Refusal Authorities to delegate their responsibilities.

**DATES:** Effective on June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. William A. Walker, Policy Division, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310-0107.

**SUPPLEMENTARY INFORMATION:** This amendment permits Access and Amendment Refusal Authorities to delegate their authority to an office or subordinate commander in the grade of GS/GM 15 and Colonel (0-6). The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 32 CFR Part 505**

Information, Archives and records, Privacy, Freedom of information.

**PART 505—[AMENDED]**

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: 5 U.S.C. 52a; DOD Directive 5400.11, June 9, 1982; and DOD Regulation 5400.11R, August 31, 1983.

2. 32 CFR § 505.1 [Amended] 505.1 is amended by revising the introductory text of paragraph (g) as follows:

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority is responsible for action on requests for access to or amendment of, records referred to them under this regulation. The officials listed below and their designees are the only Access and Amendment Refusal Authorities for records in their authority to an office or subordinate commander. All delegations must be in writing. If an AARA's delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the AARA and identify the AARA by name and position in the written response to the

requester. Denial of access or amendment by an AARA's delegate must have appropriate legal review. Delegations will not be made below the colonel (06) or GS/GM 15 level. Such delegations must not slow Privacy actions. AARA's will send the names, offices and telephone numbers of their delegates to the Director of Information Systems for Command, Central, Communications and Computers, HQDA, ATTN: SAIS-PDD Washington, DC 20310-0107.

\* \* \* \* \*

John O. Roach,  
Department of the Army, Liaison Officer  
With the Federal Register.

[FR Doc. 91-15417 Filed 6-27-91; 8:45 am]

BILLING CODE 3710-06-M

**Corps of Engineers, Department of the Army****36 CFR Part 327****Shoreline Management Fees at Civil Works Projects**

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** This fee schedule complies with the Office of Management and Budget Circular A-25, User Charges. This rule provides policy and guidance to implement the fee schedule for shoreline management at Civil Works water resource projects. This action incorporates changes deemed necessary to meet new and changing conditions.

**EFFECTIVE DATE:** October 1, 1991.

**ADDRESSES:** Office of the Chief of Engineers, Attn: CECW-ON, 20 Massachusetts Avenue, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrell E. Lewis (202) 272-0247.

**SUPPLEMENTARY INFORMATION:** 36 CFR 327.30 Lakeshore Management at Civil Works Projects, published in the *Federal Register* in December 1974, stated in part " \* \* \* As permits become eligible for renewal after July 1, 1976, a charge of \$10 for each new permit and a \$5 annual fee for inspection of floating facilities will be made. There will be no annual inspection fee for permits for vegetation modification of lakeshore areas. In all cases, the total administrative charge will be collected initially at the time of permit issuance rather than on a piecemeal annual bases." The cost of a five year permit was \$30.

On June 8, 1988, a proposed rule was published in the *Federal Register* (53 FR 21495) which called for the Fee Schedule

for Shoreline Management permits to be published separately from 36 CFR 327.30. A final rule was published in the *Federal Register* on July 27, 1990 (55 FR 30690).

Office of Management and Budget Circular A-25 requires that when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits.

The fee schedule will appear in § 327.31, a new section. Permits will be issued for a five year period to reduce costs to the permittee. To reduce the governments administrative workload, permits may be issued for a term less than five years. The new fees will not be assessed until the expiration of a current valid permit.

As stated in § 327.30 appendix A(2)(a), fees shall be paid prior to issuing the permit.

When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new facilities/facilities.

Similarly, if multiple activities/facilities are authorized, under a single permit renewal, only one periodic fee will be charged for each year of the permit as if the permit was for a single activity/facility.

If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

This fee schedule does not affect the fees charged for real estate instruments. These fees are established by a separate regulation.

The fees for Shoreline Management permits issued in accordance with 36 CFR 327.30, are as follows:

*New facility*—A one time fee of \$400 plus \$15 per year periodic inspection fee (payable in advance for 5 year increments).

*New owner*—A one time fee of \$200 plus \$15 per year periodic inspection fee

(payable in advance for 5 year increments).

**Facility modifications**—A one time fee of \$100 for each modification request.

**Facility renewal**—A \$15 per year periodic inspection fee (payable in advance in 5 year increments).

**Vegetation modification—new permit**—A one time fee of \$200 plus \$15 periodic inspection fee (payable in advance for 5 year increments).

**Vegetation modification—change**—A one time fee of \$100.

**Vegetation modification—new adjacent land owner**—A one time fee of \$100 plus \$15 periodic inspection fee (payable in advance in 5 year increments).

**Vegetation modification—permit renewal**—A \$15 per year periodic inspection fee (payable in advance in 5 year increments).

Fees will not be assessed for erosion control permits when the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures. However, they are still subject to section 404 and section 10 permit requirements.

No refunds will be made for any unused portions of permits terminated by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

#### Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

The purpose and effect of this revision is to incorporate changes deemed necessary to meet new and changing conditions. The revision is consistent with the regulation and strengthens the regulation for more effective management of Corps of Engineers water resource development projects. This rule is also intended to make the regulation consistent with legislative actions. No increased administrative or

paperwork burden is imposed by this revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

#### Background

On August 10, 1990, a notice of proposed Shoreline Management Fees at Civil Works Projects, was published in the Federal Register (55 FR 32644). A 45 day period for public review was provided. During this period, 276 letters of comment were received from a broad spectrum of interests including individuals, businesses, local and national associations and state, local and federal agencies. The number of responses to the proposed fee schedule change were less than 1% of the existing shoreline management permits nationwide. The majority of the comments received were opposed to a fee increase. Other comments agreed with the increase but called for a smaller percentage of increase. The Army has considered and evaluated all the comments and recognizes that the new fee schedule is a substantial increase over the existing schedule. Since there has not been an increase to the fee schedule since 1974 the new schedule better enables the government to recover a greater percentage of the cost incurred in administering the shoreline management program. It should be noted that many of the comments were almost identical in their content. The following discusses the issues raised and the Army's response. Copies of all written comments are available for public inspection at the Office of the Chief of Engineers, room 6223, 20 Massachusetts Avenue NW., Washington, DC. Copies of the final rule are also available upon request.

#### Comments

**Comment:** Fee increases should be phased in over several years.

**Response:** Phasing the fee schedule in over several years would not be cost effective. Delaying the implementation of the new fees would increase the overall cost of administering the shoreline management program.

**Comment:** Shoreline Management fees should be more reasonable.

**Response:** Office of Management and Budget Circular A-25, requires that when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits." 36 CFR part 327 Fees reflect a greater portion of the

administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. The fees were determined by dividing the nationwide administrative costs by the number of permits issued. There are currently over 38,000 shoreline management permits with an average term of 3.81 years. The current annual revenue from shoreline management permits is approximately \$245,000 and the total annual cost of administering this program is approximately \$3,600,000. It is estimated that the new fee schedule will produce an annual revenue of \$1,310,575.

**Comment:** Present fees are more than adequate.

**Response:** The new fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. The new fee schedule enables the government to recover a greater portion of the cost of administering the program.

**Comment:** Increased fees penalize people for upgrading facility.

**Response:** The new fee schedule is not a penalty, it simply insures that those individuals or groups deriving the most benefit from shoreline management are paying the administrative cost of the program. The new fee schedule will also enable the government to recover a greater portion of the cost of the program.

**Comment:** Increased fees will jeopardize property values, and hurt the economy.

**Response:** The Corps has determined this rule will not have a significant adverse economic effect on consumers, individuals, geographic regions, or federal, state or local governmental agencies.

**Comment:** Advanced payments are a way to accrue additional monies by questionable ethics.

**Response:** Advanced payments will help to reduce the government's cost in administering this program by reducing the administrative workload.

**Comment:** There is no provision for the return of advanced payments if an owner moves.

**Response:** Advanced payments will not be refunded. The administrative cost associated with issuing refunds would increase the overall program cost. Refunds may be granted if the government terminates the permit.

**Comment:** The cost of a new facility should be identical to Facility-Renewal periodic inspection fees.

**Response:** The cost of administering a new permit is significantly higher than a

renewal. Initial site visits and meetings with property owners make processing a new permit more expensive than reviewing facility renewals.

*Comment:* The fee schedule should be commensurate with the use of property by the owner.

*Response:* The fee schedule reflects a portion of the cost accrued to the government in administering the shoreline management program. The extent of use is not a factor.

*Comment:* Shoreline Management fee increases will deter development, and affect business on the lake.

*Response:* The Corps believes this rule will not have significant adverse economic effect on business or development and will not effect productivity, competition, investment, or employment.

*Comment:* The Corps is using cost as a way to prevent new docks.

*Response:* Fees reflect the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. Shoreline permit holders are deriving the most benefit from this program and should pay the cost. The focus of the Corps Shoreline Management program will continue to allow development in limited development areas and strike a balance between permitted private use and resource protection for general public use.

*Comment:* A new owner has already paid for his property.

*Response:* The issuance of a shoreline management permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. Consistent with 36 CFR 327.30 appendix C, Shoreline Use Permits Conditions (20), permits are not transferable, "upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void".

*Comment:* Charge non-compliance dock owners for return inspections.

*Response:* The cost of non-compliance will not be recovered under this rule. Any non-compliance will be handled through 36 CFR 327.19. Methods and procedures for enforcing non-compliance will be set forth in individual project Shoreline Management Plans. Permit holders who allow a permit to expire will be charged the "New Facility" fee if and when they desire to obtain a new permit.

*Comment:* The new fees pose an unfair burden on current and future property owners.

*Response:* The cost of the shoreline management program will be paid by those individuals who are deriving the

most benefit, i.e., shoreline management permit holders.

*Comment:* Vegetation modification fees should be prorated based on the area covered by the permit.

*Response:* The government's cost to administer a permit for 1,000 sq. ft. of mowed area is the same as for 10,000 sq. ft. of mowed area. The proration of fees is not a reasonable method of recovering administrative cost.

*Comment:* Allow adjacent property owners to take care of the shoreline at a reasonable cost.

*Response:* The new fees are reasonable and reflect a portion of the government's administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. The new fee schedule will allow the government to recover a greater portion of the cost of administering the program.

*Comment:* Since people do the work fees should stay the same.

*Response:* The shoreline maintenance work done by adjacent property owners is generally for their benefit. The new fees reflect a portion of the government's administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

*Comment:* I do not feel we should pay to mow grass or clean the beach for the U.S. government.

*Response:* Mowing the cleaning the beach are not requirements of the Corps of Engineers nor are they requirements for obtaining/issuing a vegetation modification permit. Shoreline clean up is generally for the benefit of the adjoining private property owner. There is no fee associated with removing trash or debris from public lands.

*Comment:* Lot owners clean up the mess left by boaters and others.

*Response:* The Corps recognizes that not all persons who use the Corps lakes and lands practice good stewardship. Through programs such as Take Pride In America the Corps of Engineers sponsors events and activities that attempt to instill a respect for public property. Participation in these events by adjacent property owners is encouraged.

*Comment:* We do not want weeds or poison ivy growing next to our house.

*Response:* It is not the intent of the Corps of Engineers to have their neighbors put up with noxious weeds next to their houses. In many cases our neighbors have located their homes close to the Corps boundary line so that they can get a better view of the lake. The fee schedule allows the government to recover a greater portion of the

administrative cost associated with issuing vegetation modification permits.

*Comment:* Opposed to paying for clearing a walk to the lake.

*Response:* Vegetation modification is an authorized activity that requires significant government expenditure to administer. The cost of administering these permits should be paid by those deriving the greatest benefit, i.e. shoreline permit holders.

*Comment:* Hold public hearing before fee implementation.

*Response:* The proposed rule, published in the Federal Register August 10, 1990, provided a 45 day public review period. The purpose of this comment period was to provide ample opportunity for the public to make their views and positions known.

*Comment:* The fee schedule should have been mailed to all permit holders.

*Response:* The proposed rule, published in the Federal Register August 10, 1990, provided a 45 day public review period. The purpose of this comment period was to provide ample opportunity for the public to make their views and positions known. The proposed fee schedule was also published in newspapers, public notices and was available for public review at the project Resource Managers office.

*Comment:* Inadequate advance on notice of rate increase.

*Response:* Federal regulation requires that the proposed fee schedule be published in the Federal Register. The proposed fee schedule was published in the Federal Register August 10, 1990. There was a 45 day period available for public comment. This review period has proven to be sufficient to receive public comment. Press releases were also made available to media sources on a nationwide basis.

*Comment:* Corps should sell land and eliminate problems.

*Response:* Joint Acquisition regulations require the Corps to retain sufficient land for authorized project purposes. The shoreline management program enables the Corps to effectively manage those lands it is required to maintain.

*Comment:* Do shoreline management permit inspections in-house instead of by contract.

*Response:* The Corps is required to administer the shoreline management program with the most cost effective methods possible. In some locations the most cost effective method is contracting.

*Comment:* With local tax increases this amounts to a double tax.

*Response:* The fee schedule is not a tax. It simply enables the government to

recover a greater portion of the cost that it incurs in administering the shoreline management program.

*Comment:* Costs should be passed on to all who use the lake.

*Response:* The cost of limited private exclusive use should be paid by those individuals gaining the most benefit, i.e. shoreline management permit holders.

*Comment:* If we pay increased fees, we should have authority on how property is used.

*Response:* Shoreline management permits convey only the privilege to use public property under the conditions of the permit and do not convey any ownership or special privilege beyond what is conveyed in the permit.

*Comment:* Make charges based on actual costs.

*Response:* Fees reflect a portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

*Comment:* Increases have no relationship to Cost of Living increases.

*Response:* There has been no increase to the fee schedule since 1974. The new fee schedule reflects a greater portion of the cost accrued to the government in administering the program. No attempt has been made to link these fees to any cost of living increase.

*Comment:* There appears to be no increase for marinas, restaurants, etc.

*Response:* The objective of the fee schedule is to assess fees for private users more commensurate with the cost of administering the program.

Commercial development activities are covered by lease, license or other legal real estate instruments and pay rental fees based on fair market values.

*Comment:* Dock and mowing fees are a bonus to the government.

*Response:* Shoreline management fees reflect a portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

*Comment:* Power generation profits should offset project costs.

*Response:* Power generation fees from customers are sent directly to power market agencies (such as Bonneville or Western Power Administrations), and from them directly to the U.S. Treasury. There are not current plans to change this process.

*Comment:* The money received from shoreline management fees will do little to improve the environment.

*Response:* Shoreline management fees are intended to recover a portion of the administrative costs of managing the program. It was never the intent of the

Corps to use these fees for environmental improvement projects.

*Comment:* Give 50% discount to senior citizens.

*Response:* A 50% discount is given to seniors through the Golden Age and Golden Access Programs by all Federal land management agencies. These discounts apply only to entrance and special use fees such as camping. 16 U.S.C. 4601 does not allow for a reduction of shoreline management fees.

*Comment:* Do not penalize the land owners for keeping the shoreline clean.

*Response:* The fee schedule was not developed to penalize property owners. It enables the government to recover a portion of the cost of administering the shoreline management program.

*Comment:* The Corps should encourage shoreline management.

*Response:* 36 CFR 327.30 provides the policy and guidance for shoreline management at Civil Works projects. The objective of all management actions is to achieve a balance between permitted private use and resource protection for general public use.

*Comment:* I just renewed my five year permit last year. When will I have to pay the new fees?

*Response:* The new renewal fee will be charged when your present permit expires. If, for some reason, you modify your facility you would be charged the appropriate facility modification fee after October 1, 1991.

*Comment:* Do not charge a one time fee.

*Response:* The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments. Charging an annual fee would increase the cost of administering the program and increase the level of fees accordingly.

*Comment:* Will the expiration date of a Shoreline Management Permit be adjusted when a Facility Modification Permit is issued?

*Response:* A Facility Modification Permit fee of \$100 will be charged each time a facility is modified. Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

*Comment:* Will the issuance of a Facility Modification Permit require payment of additional inspection fees?

*Response:* No. A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Therefore, a periodic fee of \$75 (\$15 x 5 years) for inspections had already been paid.

*Comment:* Retain one year Vegetation Modification Permits instead of

increasing them to a five year permit because mowed areas need to be inspected once a year. Many Vegetative Permit holders are renters who may not stay five years.

*Response:* The increase of Vegetation Permits to five year periods does not suggest abandoning periodic inspections of these properties.

*Comment:* Combining vegetative modification and floating facilities into one permit is acceptable, but there should be a separate fee for each activity/facility.

*Response:* The one time fee will be charged as if the permit was for a single activity. In all cases the highest fee will be charged.

*Comment:* A one time fee (say \$30) should be assessed for all permit renewals and "new owner" permits.

*Response:* The cost associated with issuing New Facility or New Owner permits is significantly higher than permit renewals. Renewals will not require a one time fee. New owner permits will be assessed a one time fee of \$200 and the \$75 periodic fee (\$15 x 5 years).

*Comment:* Some of the proposed fees are higher than forfeiture schedule requirements for violation of affected sections of title 36 (i.e. 327.14(a)).

*Response:* The fee schedule is designed to recover a portion of the expense that the government incurs when administering the shoreline management program and includes base labor, fringe benefits, overhead, equipment, materials and supplies. The title 36 forfeiture schedules are determined by Federal Magistrates, not the Corps.

*Comment:* Expand the term "new owner" to "new owner/new permittee".

*Response:* A new owner has been defined as any reassignment of an existing permit other than a single permittee of a multi-slip community dock.

*Comment:* Limited mowing and underbrushing permits (such as along boundary lines, within corporate limits, to meet fire and health codes) should continue to be issued free of charge.

*Response:* The issuance of non-shoreline management permits to meet health and safety codes and commitments consistent with local project policy may be issued free of charge and will be evaluated on a case by case basis and approved by the project Resource Manager.

*Comment:* The draft schedule does not allow for multi-slip/multi-owner facilities where the most common transaction would be a change to one individual who is part of that

community dock. Perhaps a separate section is needed for community docks.

*Response:* There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner would be done free of charge.

*Comment:* Will additional "periodic fees" be charged when a Facility Modification Permit is issued?

*Response:* No additional "periodic fees" will be charged when a Facility Modification Permit is issued. The fee schedule has been changed to reflect this suggestion.

*Comment:* Will "one time fees" be applied every time that an applicant proposes a specific activity/facility?

*Response:* The "one time fees" will be required every time a separate application is made for a specific activity/facility.

*Comment:* What fee is assessed to a co-permittee of an existing permit?

*Response:* In the case of a single facility, the assigning of co-permittees, other than husband and wife, is not allowed.

*Comment:* Please define New Owner, New Facility, Vegetation Modification—New Permit & New Owner, Facility Modification, Permit Renewal, and Vegetation Modification Change.

*Response:* Based on comments, these definitions were developed to clarify the Fee Schedule terminology. Vegetation Modification Change and Permit Renewal were added in response to comments received.

*New Facility*—A facility for which a permit has expired or where no facility has existed previously.

*New Owner*—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

*Vegetation Modification—New Permit*—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

*Vegetation Modification—New owner*—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

*Vegetation Modification—Change*—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

*Facility Modification*—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or replacement of an existing facility.

*Permit Renewal*—The term of an existing permit has expired and the

activity/facility is being reauthorized, without change, under a new permit.

#### List of Subjects in 36 CFR Part 327

Penalties, Recreation, and Recreation areas, Water resources.

#### Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

For the reasons set out in the preamble, the U.S. Army Corps of Engineers amends 36 CFR part 327 as set forth below.

#### PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

**Authority:** The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1).

2. Section 327.30 is amended by revising the last sentence of paragraph (k) as follows:

#### § 327.30 Shoreline management on civil works projects.

\* \* \* \* \*

(k) \* \* \* The Fee Schedule is published in 327.31.

3. Section 327.31 is added as follows:

#### § 327.31 Shoreline Management fee schedule.

(a) *Applicability.* This fee schedule is applicable to all permits issued in accordance with § 327.30, Shoreline Management at Civil Works Projects.

(b) *General.* (1) Permits will be issued for a five year period to reduce costs to the permittee. To reduce administrative workload, projects may elect to issue a permit for a term less than five years. The new fees will not be assessed until the expiration of a valid permit.

(2) When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new activities/facilities.

(3) Similarly, if multiple activities/facilities are authorized under a single permit renewal, only one periodic fee will be charged for each year of the permit as if the permit was for a single activity/facility.

(4) If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

(5) No periodic inspection fee will be charged for facility modifications.

(6) This fee schedule does not affect the fees charged for real estate instruments. Those fees are established by a separate regulation.

(7) This fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. This fee schedule enables the government to recover a greater portion of the cost of administering the shoreline management program.

(8) This fee schedule insures that those individuals or groups deriving the most benefit from shoreline management are paying a larger portion of the administrative cost of the program.

(9) The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments.

(10) Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

(11) A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Current permit holders have already paid a periodic fee, therefore no additional periodic fees will be paid for the duration of the permit.

(12) There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner will be done free of charge.

(13) Fees will not be assessed for erosion control permits because the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures.

(14) No refunds will be made for any unused portions of permits terminated by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

(15) The 50% fee reduction to senior citizens available through the Golden Age and Golden Access programs does not apply to shoreline management fees.

(16) The "one time fees" will be required each time an application is made for a specific activity/facility.

(17) Co-permit holders, other than husband and wife, are not allowed.

**(18) Definitions:**

**New facility**—A facility for which a permit has expired or where no facility has previously existed.

**New owner**—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

**Vegetation modification new permit**—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

**Vegetation modification—New owner**—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

**Vegetation modification—Change**—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

**Facility modification**—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or, replacement of an existing facility.

**Permit renewal**—The term of an existing permit has expired and the activity/facility is being reauthorized, without change, under a new permit.

(c) **Fee schedule.** The fee schedule is as follows:

Type of permit	One time fee	Periodic fee*	Total 5 year fee
<b>Facilities:</b>			
New facility .....	\$400	\$15/year.....	\$475
New owner.....	200	15/year.....	275
Facility mod.....	100	0 .....	100
Permit renewal...	0	15/year.....	75
<b>Vegetation modification:</b>			
New permit .....	200	15/year.....	275
New owner.....	100	15/year.....	175
Permit renewal...	0	15/year.....	75
Change.....	100	0 .....	100
Erosion control...	0	0 .....	0

\*Periodic fees (inspection fees) are set at \$15 per year and are payable in advance for 5 year increments.

Approved.

**Robert L. Herndon,**

*Colonel, Corps of Engineers, Chief of Staff.*

[FR Doc. 91-15418 Filed 6-27-91; 8:45 am]

BILLING CODE 3710-92-M

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 201**

[Docket No. 91-9]

**Cable Compulsory and Satellite Carrier Statutory Licenses: Electronic Payment of Royalties**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office amends the regulations for statements of account and filing requirements for sections 111 and 119 of title 17, United States Code. Those sections provide, respectively, a compulsory license for the secondary transmission by cable systems of broadcast signals, and a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners.

Such transmissions by cable systems and satellite carriers require payment to copyright owners of royalties, which, under existing regulations, are remitted to the Copyright Office by certified or cashier's checks, or by money order. 37 CFR 201.11 (f) and (h); § 201.17(i) and (j) (1990).

The new regulation provides the additional option of electronic payment by electronic funds transfer, which should facilitate payment by cable systems and satellite carriers, and lessen the administrative burden of the Copyright Office.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** Under the cable compulsory license of section 111 of the Copyright Act, title 17 of the United States Code, and the satellite carrier statutory license of section 119 of the Act, secondary transmissions by cable systems of broadcast signals and certain secondary transmissions by satellite carriers to home dish owners are subject to payment of royalties. The royalty payments are remitted to the Copyright Office semi-annually. The Copyright Office invests the royalties in United States Treasury securities, pending ultimate distribution of the royalties to entitled copyright owners by the Copyright Royalty Tribunal.

The current Copyright Office regulations permit cable systems and satellite carriers to pay royalty fees by certified or cashier's checks, or by

money orders. 37 CFR 201.11 (f), (g) and (h); § 201.17 (i) and (j) (1990). The Copyright Office is amending the existing regulations to provide cable systems and satellite carriers with the additional option of paying royalties by electronic funds transfer.

Electronic payment allows cable systems and satellite carriers to preauthorize their financial institutions to debit their accounts, instead of having to factor in mail or other delivery time. Cable systems and satellite carriers will have the ability to transfer funds until the due date without incurring interest assessments. Royalties will go directly to the Department of Treasury, streamlining the current process of sending checks to the Copyright Office to be sent later to Treasury. The royalties will be invested in a more timely manner, earning additional funds for copyright owners. Finally, electronic payment will lessen the Copyright Office's administrative workload, reducing paperwork and related administrative costs, and improving reporting and audit control of cable and satellite royalty payments.

By these technical amendments to the regulations, we simply make it possible for cable systems and satellite carriers to effect electronic payment of royalties. The United States Treasury Department specifies the governing procedures. The Licensing Division of the Copyright Office should be contacted for further details about electronic payment of royalties. Treasury regulations are subject to change, but they generally establish minimum amounts for electronic transfer of funds.

**Regulatory Flexibility Act Statement**

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.<sup>1</sup>

<sup>1</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1976, and it is now subject to it only in areas specified by section

Continued

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation, which establishes an optional procedure, will have no significant impact on small businesses.

#### List of Subjects in 37 CFR Part 201

Cable compulsory license, Satellite carrier license.

#### Final Regulations

In consideration of the foregoing, part 201 of 37 CFR is amended in the manner set forth below.

#### PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

**Authority:** Sec. 702, 90 Stat 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116.

#### § 201.11 [Amended]

2. In § 201.11 paragraph (f) is revised to read as follows:

(f) *Royalty fee payment.* All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

#### § 201.11 [Amended]

3. Section 201.11(g)(3)(iv)(B) is amended by removing the period and adding a semi-colon after the word "Copyrights" and inserting the phrase "or electronic payment."

3a. In § 201.11(h)(1) the third sentence is amended by removing the words "or money order" and replacing them with the words "money order, or electronic payment."

701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

#### § 201.17 [Amended]

4. In § 201.17 paragraph (i)(1) is revised to read as follows:

(i) *Royalty fee payment.* (1) All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

5. In § 201.17(i)(2) the third sentence is amended by removing the words "or money order" and replacing them with the words "money order, or electronic payment."

6. Section 201.17(j)(3)(iv)(B) is amended by deleting the period and adding a semi-colon after the word "Copyrights" and inserting the phrase "or an electronic payment."

Dated: June 14, 1991.

Ralph Oman,  
Register of Copyrights.

Approved by:  
James H. Billington,  
The Librarian of Congress.  
[FR Doc. 91-15206 Filed 6-27-91; 8:45 am]  
BILLING CODE 1410-08-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 271

[FRL-3969-2]

#### Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Mississippi has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revision consists of the Toxicity Characteristic Leaching Procedure (TCLP) Rule, a component of HSWA Cluster II. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to

public review and comment, that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revision. Mississippi's application for the TCLP program revision is available for public review and comment.

**DATES:** Final authorization for Mississippi's program revision shall be effective August 27, 1991, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, July 29, 1991.

**ADDRESSES:** Copies of Mississippi's program revision application are available during 8 a.m. to 4 p.m. at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, Post Office Box 10385, Jackson, Mississippi 39209; (601) 961-5062; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460; 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; 404/347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347-2234.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

#### B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, and March 29, 1991. On February 6, 1991, Mississippi submitted a program revision application for additional program approval. Today, Mississippi is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modification to Mississippi. The public may submit written comments on EPA's immediate final decision up until July 29, 1991.

Mississippi's application for this program revision is available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

On the effective date of final authorization, Mississippi will be authorized to carry out, in lieu of the Federal Program, the TCLP provisions of the State's program which are analogous to the Toxicity Characteristic Revisions promulgated by EPA on March 29, 1990 (55 FR 11798-1877).

Mississippi incorporates the Federal regulations by reference. The TCLP Rule was adopted on November 26, 1990 by the Mississippi Commission on Environmental Quality and became effective December 26, 1990. A copy of these regulations are available at the Mississippi Department of Environmental Quality as indicated in the "ADDRESSEES" section of this notice.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

Approval of Mississippi's program revision shall become effective in 60 days, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

#### C. Decision

I conclude that Mississippi's application for this program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

#### Compliance with Executive Order 12291

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

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian

lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: June 21, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-15471 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6864

[Docket No. CO-932-4214-10; C-015944]

#### Opening of Land Subject to the Provisions of Section 24 of the Federal Power Act in Power Project No. 400; CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order opens, subject to the provisions of section 24 of the Federal Power Act, 15.48 acres of National Forest System lands withdrawn by Power Project No. 400. This action will permit consummation of a pending Forest Service land exchange, but will not authorize any nonproject use without the consent of the Federal Energy Regulatory Commission or the Project Licensee. The lands continue to be open to mineral leasing, but remain closed to all other uses.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO-535, it is ordered as follows:

1. At 9 a.m. on June 28, 1991, the lands in Power Project No. 400 being 50 feet either side of the flowline of an underground pipeline, within the following described areas, will be opened to disposal by land exchange subject to the provisions of section 24 of the Federal Power Act, 16 U.S.C. 818, and that any use of the lands not authorized by the Federal Energy

Regulatory Commission license for Project 400 without the consent of the Federal Energy Regulatory Commission or the Project Licensee is prohibited. This action is subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

#### New Mexico Principal Meridian

T. 39 N., R 9 W.,

Sec. 13, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 24, Lot 2, W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ E $\frac{1}{2}$ N  
E $\frac{1}{4}$ NW $\frac{1}{4}$ , and E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 25, lots 3 and 9.

The lands described aggregate approximately 15.48 acres in La Plata and San Juan Counties.

Dated: June 24, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-15458 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-JB-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 78

RIN 0905-AD32

#### Conditions for Waiver of Denial of Federal Benefits

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule amends title 45 of the Code of Federal Regulations by adding a part 78 to provide definitions to assist Federal and State courts to implement section 5301 of Public Law 100-690, the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a, relating to the denial of Federal benefits to convicted drug traffickers and possessors. Among other things, this rule establishes definitions by which an individual may have his or her denial of Federal benefits waived under section 5301. The Department suggests that this rule be read in conjunction with the Department of Justice Guidelines, Denial of Federal Benefits for Certain Drug Offenders, published in the *Federal Register* (55 FR 37424) on September 11, 1990.

**EFFECTIVE DATE:** This regulation is effective July 29, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Frank Sullivan, Associate Administrator for Policy Coordination, Alcohol, Drug Abuse, and Mental Health Administration, room 12C06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443-4111.

**SUPPLEMENTARY INFORMATION:** On September 11, 1990, the Assistant

Secretary of Health, with the approval of the Secretary of Health and Human Services, published in the *Federal Register* (55 FR 37436), a Notice of Proposed Rulemaking (NPRM) to add a new part 78 to title 45 of the Code of Federal Regulations. The rule proposed definitions and procedures to assist Federal and State courts in their determination whether to deny Federal benefits to persons convicted of drug trafficking or drug possession. The public comment period on the proposed regulations closed on October 11, 1990, and comments were received from one Federal agency. This document considers those comments, makes minor changes to the NPRM, and adopts a final rule.

#### Response to Comments

The respondent's principal comment related to the Department's definition of "deemed to be rehabilitated" provided in § 78.2(a). That term, in relevant part, means "an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to the date of sentencing \* \* \*." According to 21 U.S.C. 853a (a)(2) and (b)(2), certain Federal benefits of drug traffickers and drug possessors will not be denied if the sentencing court determines that the individuals are "deemed to be rehabilitated."

The respondent requests modifications of the definition of "deemed to be rehabilitated" so that it can be applied consistently with the related term "has otherwise been rehabilitated" provided in 21 U.S.C. 853a(c)(B). Section 853a(c)(B) deals with the suspension of the period of ineligibility for Federal benefits, which occurs following the court's original decision to deny such benefits, and provides that the period of ineligibility will, among other things, be suspended if the individual "has otherwise been rehabilitated."

Respondent is concerned that a court at a hearing for suspension of the period of ineligibility may wish to apply the definition of "deemed to be rehabilitated" to the term "has otherwise been rehabilitated," but will find itself unable to do so. This inability would result because the proposed definition of "deemed to be rehabilitated" requires the court to find that the individual was drug-free for 180 days prior to sentencing. Since the determination whether to suspend the period of ineligibility under section 853a(c)(B) occurs after sentencing, this means that the definition of "deemed to be rehabilitated" could not literally be applied in that situation.

While the Department recognizes the reasonableness of having consistent definitions for the court to follow for these two closely related terms, it is unable to make the change requested because its authority to issue rules is limited to sections 853a (a)(2) and (b)(2); thus, it cannot explicitly extend its definition to the term "has otherwise been rehabilitated." Nevertheless, we believe a court may use the Department's definition of "deemed to be rehabilitated" as guidance and accomplish the same result, simply by requiring that an individual be drug-free for the 180 day period preceding the date on which the court finds that he or she had "otherwise been rehabilitated."

This approach is consistent with the Department of Justice Guidelines (55 FR 37434) which defines the term "has otherwise been rehabilitated" to mean, among other things, that an "individual has abstained from the illegal use of a controlled substance for a period of at least 180 days \* \* \*." The Department of Justice Guidelines do not limit the 180 consecutive drug-free days to the date of sentencing; rather the individual must have abstained from drug use "for a period of at least 180 days." Thus, under the Department of Justice Guidelines and consistent with these regulations, a court can apply the 180 day drug-free period prior to the date of suspension of ineligibility of Federal benefits, rather than prior to sentencing.

The Department has also made some minor corrections and changes in the rule. In § 78.3(a), the reference to section 853a(a)(1) was changed to 853a(a)(2), and in § 78.3(a)(1), the reference to § 78.2(c) was changed to § 78.2(b). In § 78.3(b), the reference to section 853a(b)(1) was changed to 853a(b)(2). The words "and including" were also added to § 78.2(a) to clarify that an individual may be "deemed to be rehabilitated" only if he or she were drug-free for at least 180 days immediately prior to and including the date of sentencing. This clarifies that the individual must be drug-free on the date of sentencing as well as the period preceding.

#### Regulatory Flexibility Act and Executive Order 12291

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared.

The Secretary has determined that this rule does not meet the criteria for a

major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required.

#### Paperwork Reduction Act of 1980

This notice of final rulemaking does not contain any requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

#### List of Subjects in 45 CFR Part 78

Drug abuse.

Accordingly, the Department of Health and Human Services is adding 45 CFR part 78 as set forth below:

Dated: May 17, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: June 12, 1991.

Louis W. Sullivan,

Secretary.

### PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS

Sec.

78.1 Applicability.

78.2 Definitions.

78.3 Benefits not denied to rehabilitated offenders.

**Authority:** Section 5301 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

#### § 78.1 Applicability.

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substances Act, 21 U.S.C. 802.

#### § 78.2 Definitions.

For the purposes of denying Federal benefits under 21 U.S.C. 853a:

(a) *Deemed to be rehabilitated* means that an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to and including the date of sentencing provided that such abstinence is documented by the results of periodic urine drug testing conducted during that period; and provided further that such drug testing is conducted using an immunoassay test approved by the Food and Drug Administration for commercial distribution or, in the case of a State offense, either using an immunoassay test approved by the Food and Drug Administration for commercial distribution or pursuant to standards approved by the State.

(b) *Long-term treatment program or long-term drug treatment program*

means any drug abuse treatment program of 180 days or more where the provider has been accredited by the Joint Commission on Accreditation of Health Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children, or licensed or otherwise approved by the State to provide drug abuse treatment.

#### § 78.3 Benefits not denied to rehabilitated offenders.

(a) No individual convicted of any Federal or State offense involving the distribution of controlled substances shall be denied Federal benefits relating to long-term drug treatment programs for addiction under 21 U.S.C. 853a(a)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

(b) No individual convicted of any Federal or State offense involving the possession of controlled substances shall be denied any Federal benefit, or otherwise subject to penalties and conditions, under 21 U.S.C. 853a(b)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

[FR Doc. 91-15433 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-20-M

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 90-485; RM-7433]

#### Radio Broadcasting Services; Bolivar and Nixa, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reallocates Channel 290C2 from Bolivar to Nixa, Missouri, and modifies the construction permit for Station KGBX-FM to specify Nixa as the community of license for Channel 290C2, in response to a petition filed by Sunburst II, Inc. See 55 FR 46960, November 8, 1990. The coordinates for Channel 290C2 at Nixa are 37-17-10 and 93-10-15. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 9, 1991.

#### FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 90-485, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington DC 20036, (202) 452-1422.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotment under Missouri, is amended by removing Channel 290C2, Bolivar, and adding Channel 290C2, Nixa.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-15500 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 90-120; RM-7218]

#### Radio Broadcasting Services; Taos, New Mexico

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Taos Communications Corp., substitutes Channel 268C1 for Channel 268C2 at Taos, New Mexico, and

modifies its license for station KTAO(FM) to specify the higher powered channel. See 55 FR 9930, March 16, 1990. Channel 268C1 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station KTAO(FM)'s outstanding construction permit, at coordinates 36-14-48 and 105-39-15. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 9, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-120, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

**List of Subjects in 47 CFR part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 268C2 and adding Channel 268C1 at Taos.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-15501 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 90-87; RM-7073]

**Radio Broadcasting Services; Marathon and Stevens Point, Wisconsin**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 285C3 for Channel 285A, reallots the channel from Stevens Point to Marathon, Wisconsin, and modifies the license for Station WMCU(FM) to specify Marathon as the community of license for Channel 285C3. This action is taken in response to a petition filed by Eagle of Wisconsin, Inc. See 55 FR 9149, March 12, 1990. The coordinates for Channel 285C3 at Marathon are 44-49-40 and 89-45-33. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 9, 1991.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 90-87, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 285A, Stevens Point and adding Channel 285C3, Marathon.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-15502 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register

Vol. 56, No. 125

Friday, June 28, 1991

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 271, 272, 273, and 278

[Amdt. No. 335]

#### Food Stamp Program: Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and food Stamp Certification Policy

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to amend Food Stamp Program regulations as a result of certain provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624, Title XVII), the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), and additional certification policy questions. The following proposals are being made to implement Public Law 101-624: (1) Providing supplemental security income (SSI) applicants or recipients with the same information at the social security office as social security applicants or recipients receive, (2) expanding the type of group homes not considered institutions in Guam and the Virgin Islands, (3) increasing the minimum benefit for one- and two-person households, and (4) clarifying the method for State agencies to follow in offering eligible households a deduction for certain recurring medical expenses. As a result of section 5040 of Public Law 101-508, references to a single application for SSI and food stamps will be removed. In addition to these provisions, the Department is taking this opportunity to propose changes which were called to our attention through policy questions or our experience. The changes are: (1) Elderly or disabled aliens with temporary status would be eligible for food stamps, and (2) a technical correction to clarify which allowances received under the Job Training Partnership Act would be

counted as income for food stamp purposes.

**DATES:** Comments on this proposed rulemaking must be received on or before July 29, 1991 in order to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or FAX (703) 756-4354. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) in room 720 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Seymour, at the above address or, by telephone at (703) 756-3496.

#### SUPPLEMENTARY INFORMATION:

##### Classification

##### *Executive Order 12291*

This proposed rule has been reviewed by the Assistant Secretary of Food and Consumer Services under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on completion, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

##### *Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and 48 FR 29112, June 24, 1983.)

#### *Regulatory Flexibility Act*

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Betty Jo Nelsen, the Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

#### Background

On November 28, 1990, the President signed Public Law 101-624, which included the Mickey Leland Memorial Domestic Hunger Relief Act. The new law made a number of changes to food stamp policy, some of which are discussed in this proposed regulation. In addition to the changes resulting from Public Law 102-624, three other changes to program regulations are being proposed.

#### *Inform All SSI Households of Food Stamp Program at Social Security Offices (7 CFR 273.2(k)(1)(i)(H) and 273.2(m))*

Under current regulations at 7 CFR 273.2(k)(1)(i), if all members of a household receive SSI, then the household may apply for food stamps at the Social Security Administration (SSA) office (social security office). If only some household members receive SSI, then the SSA office does not take a food stamp application from the household.

The processing requirements are different for applicants or recipients of social security benefits under title II of the Social Security Act (42 U.S.C. 401). Under 7 CFR 273.2(l), an individual who is applying for or receiving social security benefits must be told about the Food Stamp Program and also told that a simple food stamp application form is available at the social security office.

Section 1741 of Public Law 101-624 extended these requirements to all persons applying for or receiving SSI. This is a straightforward change in the law to make the program more uniformly accessible to applicants for or recipients of SSI.

Accordingly, a new § 273.2(m) is proposed to be added to extend the same informational benefits to individuals who are applying for or receiving SSI as those who are applying for or receiving social security already receive. Also, 7 CFR 273.2(k)(1)(i)(H) is proposed to be amended to make a conforming change to delete the requirement that SSI applicants or recipients be referred to the food stamp office to find out about the program and receive an application.

*Expanding of Types of Group Homes Not Considered Institutions (7 CFR 271.2, 273.1(e)(iii), and 278.1(f))*

Under section 3(i) of the Food Stamp Act of 1977 (7 U.S.C. 2021(i)), as amended, persons who live in institutions or boarding houses cannot receive food stamps, unless certain criteria are met. (These criteria are set forth in section 3(i) of the Act and in the definition of "Group living arrangement" in 7 CFR 271.2 of the regulations.) As relates to elderly, blind, and disabled individuals, these criteria require that: (1) *The meals* must be prepared and served by a group living arrangement facility to no more than sixteen residents who are *blind or disabled* recipients of benefits under title II (Old-Age, Survivors, and Disability Insurance Benefits—social security), or title XVI (Supplemental Security Income for the Aged, Blind, or Disabled) of the Social Security Act (see definition of "eligible foods" at 7 CFR 271.2), (2) the institution must meet criteria defined under regulations issued under section 1616(e) of the Social Security Act (see definition of "group living arrangement" at 7 CFR 271.2), and (3) individuals must meet criteria designating them as disabled or blind persons receiving social security or SSI (see 7 CFR 273.1(e)(1)(iii)).

Guam and the Virgin Islands do not have an SSI program. Instead, they have Old Age Assistance, Aid to the Permanently and Totally Disabled, and Aid to the Blind—programs which SSI replaced elsewhere. Because they have no SSI program, blind and disabled citizens who live in group homes in Guam and the Virgin Islands are considered residents of institutions and therefore ineligible for the Food Stamp Program.

Section 1712 of Public Law 101-624 amended sections 3(g) and 3(i) of the Food Stamp Act (7 U.S.C. 2012(g) and (i)) to extend the same food stamp benefits to blind and disabled residents of Guam and the Virgin Islands as they would receive in the 50 States and D.C. Thus, they would no longer be considered "residents of institutions" for food stamp purposes, their residences would

qualify to be considered group living arrangements, and their meals would be considered eligible food.

In order to implement this provision, 7 CFR 271.2, 273.1(e)(iii), and 278.1(f) are proposed to be amended to: (1) Change the definition of "eligible foods" to add meals prepared and served under titles I (Old Age Assistance), II (Social Security), X (Aid to the Blind), and XIV (Aid to the Permanently and Totally Disabled) of the Social Security Act, (2) change the definition of group living arrangements to include institutions in Guam and the Virgin Islands, and (3) clarify that residents of group living arrangements which are certified under standards determined by the Secretary to be comparable to standards under the Social Security Act are eligible for food stamps.

*Minimum Benefit (7 CFR 271.2 and 271.2)*

Under section 8(a) of the Food Stamp Act (7 U.S.C. 2017(a)) and 7 CFR 273.10(e)(2)(ii)(C), one- and two-person households are entitled to a minimum monthly food stamp allotment of \$10.

Under section 1730 of Public Law 101-624, section 8(a) of the Act was amended to provide that the minimum benefit be adjusted based on annual changes in the Thrifty Food Plan (TFP) rounded to the nearest \$5. (The TFP is a model food plan which households can use to purchase a low-cost, nutritionally adequate diet. Food stamp allotments are based upon 103 percent of the TFP for a particular month for a family of four. The cost of the TFP is updated each month based upon certain changes in food costs determined by the Bureau of Labor Statistics (BLS).)

In order to implement this provision, the Department is proposing that future adjustments in the minimum benefit be made as follows:

(1) Each year, the percentage change in the TFP from the preceding June to the current June (prior to rounding) will be calculated. For example, the June 1990 TFP (prior to rounding) was \$342.25, and the June 1989 TFP was \$324.55 for a percentage increase of 5.45 percent.

(2) This percentage change would be multiplied by the previous "unrounded" minimum benefit to obtain a new unrounded minimum benefit. The new unrounded minimum benefit would be rounded to the nearest \$5 in accordance with the statute. The current minimum benefit of \$10 would be considered the unrounded minimum benefit for the first year. Thus, for the current year, the minimum benefit of \$10 would be multiplied by the percentage increase of 5.45 percent and a new unrounded

minimum benefit of \$10.55 would be obtained. This unrounded minimum benefit would be rounded to the nearest \$5, resulting in no change from the current \$10 minimum benefit. For fiscal year 1992 (the fiscal year beginning October 1, 1991), the percentage increase in the TFP from June 1990 to June 1991 will be multiplied by the fiscal year 1991 unrounded minimum benefit of \$10.55 to obtain a new unrounded minimum benefit.

(3) Each year's unrounded and rounded minimum benefit numbers would be announced in the same manner as the other food stamp cost-of-living adjustments. (Because of the statutory rounding to the nearest \$5, it will take some time before the unrounded minimum benefit will result in an increase in the minimum benefit to \$15.)

Accordingly, 7 CFR 271.2 is proposed to be amended to reflect a new definition for minimum benefit. In addition, 7 CFR 271.7 (b) and (d) and 273.10(e)(2) (ii)(C) and (vi)(B) and 273.18(g)(3) are being amended to make conforming changes to remove references to the \$10 minimum benefit.

*Verification of Recurring Anticipated Medical Expenses/Excess Medical Deduction (7 CFR 273.10(d)(8) and 273.21(i)(1))*

Under current regulations at 7 CFR 273.2(f)(1), new applicants must have certain information verified before they are certified. Since medical expenses which exceed \$35 a month may be deducted for household members who are elderly or disabled as defined in 7 CFR 271.2, the information which must be verified includes the amount of any medical expenses deductible under 7 CFR 273.9(d)(3).

There are special rules for households whose medical expenses change during the certification period. For households not on monthly reporting, 7 CFR 273.12(a)(1)(vi) provides that changes greater than \$25 in the total amount of allowable medical expenses must be reported. If the change is reported at recertification, previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 must be verified prior to recertification, and changes of \$25 or less must be verified only if they are questionable (7 CFR 273.2(f)(8)).

For monthly reporting/retrospective budgeting households, the household must choose one of two options under 7 CFR 273.21(i). It must: (1) Report all allowable medical expenses each month and verify expenses which have changed or are questionable, or (2)

report and verify only changes of more than \$25 in total allowable medical expenses. If the household does not verify its monthly allowable medical expenses in accordance with whichever option it has chosen, it will not receive the medical deduction in accordance with 7 CFR 273.21(j)(3)(iii) (C) and (D). Thus, the regulations require some monthly reporting households to report and verify their medical expenses monthly.

Section 1717 of Public Law 101-624 amended section 5(e) of the Food Stamp Act (7 U.S.C. 2014(e)) to take into account situations where certain reasonably anticipated recurring medical expenses are expected to change. According to the language of the statute, the method: (1) Must "rely on reasonable estimates of the (household) member's expected medical expenses for the certification period (including changes that can be reasonably anticipated based on available information about the (household) member's medical condition, public or private medical insurance coverage, and the current verified medical expenses incurred by the member)" and (2) must "not require further reporting or verification of a change in medical expenses if" that change had "been anticipated for the certification period". Since section 1717 reflects current policy, food stamp regulations do not need to be revised.

*Prerelease/Single-Application Requirement (7 CFR 273.2(c)(1), 273.2(i)(3)(i), and 273.2(k)(1)(i)(D))*

Section 11006 of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, enacted October 27, 1986), allows individuals in institutions applying for SSI and food stamp benefits to complete a single application for SSI and food stamps before they are released from the institution. On January 30, 1989, the Department published final regulations at 54 FR 4249 concerning this provision. At that time, the Social Security Administration (SSA) accepted SSI applications from individuals not yet discharged from an institution under their Prerelease Program for the Institutionalized. However, there were no similar procedures in Food Stamp Program regulations for processing food stamp applications for residents of public institutions prior to their release from the institution. Consequently, residents of institutions had to wait until they were released before they could apply for food stamp benefits.

As a result of the Anti-Drug Abuse Act of 1986, SSA and FNS began development of a single combined application form which would be

accepted at the institution under SSA's Prerelease Program for the Institutionalized. The combined application form would be forwarded by SSA to the food stamp office. Since development of the single application has still not been completed, State agencies have not been required to implement the single application provision. Instead, current food stamp regulations at 7 CFR 273.1(e)(2) specify that certain residents of public institutions are permitted to apply for food stamps at the same time as they apply for SSI.

On November 5, 1990, section 5040 of the Social Security Act was amended by Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, to provide that, instead of a single joint application form, the Secretaries of the Departments of Health and Human Services and Agriculture would be required to establish procedures under which an individual could apply for food stamps at the same time he/she applies for SSI. Since this is the procedure currently being followed, no substantive change in food stamp regulations is necessary. However, in order to clarify that a single application is no longer required, the regulations are proposed to be amended to remove references to a single application.

Accordingly, 7 CFR 273.2(c)(1), 273.2(i)(3)(i), and 273.2(k)(1)(i)(D) are proposed to be amended to clarify that there will not be a separate joint application form for food stamps and SSI.

*Elderly/Disabled Aliens With Temporary Status (7 CFR 273.4(a)(12))*

Section 6(f) of the Food Stamp Act (7 U.S.C. 2015(f)) provides that in order to be eligible for food stamp assistance, applicants must be residents of the U.S. and either U.S. citizens or certain types of aliens. The Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, dated November 6, 1986 (8 U.S.C. 1255c), established a number of new categories of legal aliens, some of which were eligible to participate in the Food Stamp Program. Current regulations at 7 CFR 273.4(a)(2)-(11) specify the types of aliens which are eligible for food stamps and set forth the circumstances under which aliens admitted to the U.S. as a result of the Immigration and Nationality Act (INA) can receive food stamps. Under 7 CFR 273.4(a), aliens lawfully admitted for permanent residence pursuant to section 245A of the INA must be aged, blind, or disabled (as defined in section 1614(a)(1) of the Social Security Act) and they must meet one of two criteria established by the Department in order to be eligible to

receive food stamps. These are that they must be either: (1) Lawfully admitted for permanent residence, or (2) have received their lawful temporary resident status at least five years prior to applying for food stamps and they must have subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA. Thus, under the Department's interpretation at 7 CFR 273.4(a), aged, blind, or disabled aliens who were originally admitted for temporary residence must wait five years prior to receiving food stamps, while aged, blind, or disabled aliens who were originally admitted for permanent residence were entitled to receive food stamps immediately.

The five-year ban on receiving food stamps related to a general provision under section 201(h) of IRCA that there would be a five-year ban on the participation of lawful temporary residents in certain federal assistance programs, one of which was the Food Stamp Program. However, section 245A(h) of IRCA specified that there would be two exceptions to this general ban. The first exception was Cuban and Haitian entrants (as defined in paragraph (1) or (2)(A) of section 501(c) of Pub. L. 96-422), and the second exception was for aged, blind, or disabled individuals (as defined in section 1614(a)(1) of the Social Security Act).

Since Cuban and Haitian entrants were already eligible to participate in the Food Stamp Program, the eligibility of Cubans and Haitians was not affected by the IRCA.

With regard to the second exception, the Department's original interpretation was set forth at 52 FR 20055, dated May 29, 1987. That is, in accordance with section 6(f) of the Food Stamp Act, these aged, blind, or disabled aliens must be in permanent resident status in order to receive food stamps. However, a question was raised about the Department's interpretation, causing the Department to reconsider its original interpretation. The Department now believes that the exception set forth in IRCA was meant to apply to aged, blind, or disabled individuals regardless of whether they were admitted for permanent residence or for temporary residence. The Department implemented this new interpretation in Indexed Policy Memo 3-90-25 dated August 22, 1990. It is also proposing that the regulations be revised to reflect this new interpretation. In accordance with current rules at 7 CFR 273.17, up to 12 months of restored benefits should be given upon request to any aged, blind, or disabled person who was denied

benefits because he or she was admitted for temporary residence under section 245A of the INA.

Accordingly, 7 CFR 273.4(a)(8) is proposed to be amended to broaden the categories of aged, blind, or disabled aliens who may receive food stamps.

*Technical Correction Concerning Certain Allowances Under the Job Training Partnership Act (JTPA) (7 CFR 273.9(b)(1)(iii) and 273.9(c))*

Under 7 CFR 273.9(b), certain income and training allowances are considered to be earned income for food stamp purposes. As a result, this income must be counted toward a household's food stamp gross income, although under 7 CFR 273.9(d)(2), a deduction for 20 percent of gross earned income can be taken in calculating net income. Under 7 CFR 273.9(b)(1)(iii), allowances received through programs authorized by the JTPA would not be considered earned income. This is an oversight in the regulations, which arose because of a change in the JTPA which was never incorporated into the food stamp regulations (see 54 FR 12169, dated March 24, 1989).

The salient history is that income allowances, earnings, and payments to individuals participating in job training programs under the JTPA were originally excluded from consideration as income by the JTPA (Pub. L. 97-300, 96 Stat 22, October 13, 1981). That law was amended by section 1509(c) of the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) to include most JTPA payments or allowances as food stamp income (except for earnings to individuals under age 19 participating in training programs under section 204(5) of Pub. L. 97-300).

Accordingly, 7 CFR 273.9(b)(1)(iii) and 273.9(c) are being amended to insure that most JTPA allowances are counted as income and that JTPA allowances under section 204(5) of the JTPA will be excluded.

#### List of Subjects

##### 7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant program-social programs.

##### 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

##### 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs,

Penalties, Reporting and recordkeeping requirements, Social Security, Students.

##### 7 CFR Part 278

Administrative practice and procedure, Food stamps, Groceries-retail, Groceries, general line-wholesaler, Penalties.

Accordingly, 7 CFR parts 271, 272, 273, and 278 are proposed to be amended as follows:

1. The authority citation for parts 271, 272, 273, and 278 continues to read as follows:

Authority: 7 U.S.C. 2011-2031.

#### PART 271—GENERAL INFORMATION AND DEFINITIONS

##### § 271.2 [Amended]

2. In § 271.2,
- a. In the definition of "Eligible foods," paragraph (5) is amended by adding the words "Title I," before the words "title II, and by adding the words ", Title X, Title XIV," after the words "title II";
- b. In the definition for "Group living arrangement," the first sentence is amended by adding the words "or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act" at the end of the sentence before the period and the second sentence is amended by adding the words "Title I," before the words "title II" and by adding the words ", Title X, Title XIV," after the words "title II"; and
- c. A new definition for "Minimum benefit" is added.

The addition reads as follows:

##### § 271.2 Definitions.

\* \* \* \* \*

*Minimum benefit* means the minimum monthly amount of food stamps that one- and two-person households receive. The amount of the minimum benefit will be reviewed annually and adjusted to the nearest \$5 each October 1 based upon the percentage change in the Thrifty Food Plan for the twelve month period ending the preceding June.

\* \* \* \* \*

##### § 271.7 [Amended]

3. In § 271.7,
- a. Paragraph (b) is amended by removing the words "a minimum benefit of \$10" in the last sentence and adding the words "the minimum benefit" in their place;
- b. Paragraph (d)(1)(ii) is amended by removing the words "a minimum benefit of \$10" in the third sentence and adding the words "the minimum benefit" in their place;

c. Paragraph (d)(2)(i) is amended by removing the words "a \$10 minimum benefit level" in the second sentence and adding the words "the minimum benefit" in their place; and

d. Paragraph (d)(3) is amended by removing the words "\$10 shall receive a minimum benefit of \$10" in the second sentence and adding the words "the minimum benefit shall receive the minimum benefit" in their place.

#### PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

##### § 273.1 [Amended]

4. In § 273.1, paragraph (e)(1)(iii) is amended by adding the words "Title I," before the words "title II" and by adding the words ", title X, Title XIV," after the words "title II";
5. In § 273.2,
- a. In paragraph (i)(3)(i) the second sentence is amended by adding the words "food stamp" before "applicaiton";
- b. In paragraph (k)(1)(i)(D) the second sentence is removed;
- c. In paragraph (k)(1)(i)(H) the first sentence is revised; and
- d. Paragraph (m) is added.
- The revision and addition read as follows:

##### § 273.2 Application processing.

\* \* \* \* \*

(k) *SSI households.* \* \* \* \* \*

(1) *Initial application and eligibility determination.* \* \* \* \* \*

(i) \* \* \* \* \*

(H) The SSA shall refer non-SSI households to the correct food stamp office. \* \* \* \* \*

\* \* \* \* \*

(m) *Households where not all members are applying for or receiving SSI.* An applicant for or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a food stamp application at the SSA office. The SSA office is not required to accept applications or to conduct interviews for SSI applicants or recipients who are not members of households in which all are SSI applicants or recipients unless the State agency has chosen to outstation eligibility workers at the SSA office. In this case, processing shall be in accordance with § 273.2(k)(1)(ii).

##### § 273.4 [Amended]

6. In § 273.4, paragraph (a)(8) is amended by adding the words "temporary or" after the word "for" and before the word "permanent".
7. In § 273.9:

a. Paragraph (b)(1)(iii) is amended by removing the words ", except for allowance received through programs authorized by the Job Training Partnership Act"; and

b. Paragraph (c)(15) is added to read as follows:

**§ 273.9 Income and deductions.**

\* \* \* \* \*

(c) *Income exclusions.* \* \* \*

(15) Earnings to individuals who are participating in on-the-job training programs under section 204(5), title II, of the Job Training Partnership Act (Pub. L. 97-300), provided that these individuals are under age 19 and are under the parental control of another adult member of the household.

\* \* \* \* \*

8. In § 273.10,

a. Paragraph (e)(2)(ii)(C) is amended by removing the words "of \$10" and adding the words, "equal to the minimum benefit" in their place;

b. Paragraph (e)(2)(vi)(B) is revised;

c. Paragraph (e)(2)(vi)(D) is amended by removing the words "a \$10" and replacing them with the word "the";

The revision reads as follows:

**§ 273.10 Determining household eligibility and benefit levels.**

\* \* \* \* \*

(e) *Calculating net income and benefit levels—* \* \* \*

(2) \* \* \*

(vi) \* \* \*

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

\* \* \* \* \*

**§ 273.16 [Amended]**

9. In § 273.16, paragraph (g)(4) is amended by removing the words "a \$10 minimum benefit level" and adding the words "the minimum benefit" in their place.

**PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS**

**§ 278.1 [Amended]**

10. In § 278.1, the second sentence of paragraph (f) is amended by adding the words "or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act" at the end of the sentence, before the period.

Dated: June 24, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-15469 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-30-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**National Highway Traffic Safety Administration**

**23 CFR Parts 1200, 1204, and 1205**

[Docket No. 81-12, Notice 7]

RIN 2127-AD55

**Uniform Procedures for State Highway Safety Programs**

**AGENCY:** Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes the establishment of uniform procedures governing approval, implementation, and management of State highway safety programs. It would implement the Department's rule concerning the administration of grants with State and local governments as it applies to highway safety programs, update and codify existing procedures, and delete obsolete provisions.

**DATES:** Comments must be received on or before August 12, 1991. The proposed rule would be effective for fiscal year 1992 highway safety programs.

**ADDRESSES:** Comments must identify the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Hand-delivered copies should be taken to room 5111. The Docket is open from 9:30 a.m. to 4 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

In NHTSA, Brian McLaughlin, Regional Coordinator, NHTSA, 202-366-2121. In FHWA, Thomas A. Hall, Chief, Safety Management Division, Federal Highway Administration, 202-366-2171.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 9, 1966, the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*) was enacted into law. Section 402 of the Act establishes a formula grant program to improve highway safety in the States. As a condition of the grant, the States

must meet certain requirements. Section 402(a) of the Act requires each State to have a highway safety program approved by the Secretary of Transportation, which is designed to reduce traffic accidents and the deaths, injuries, and property damage resulting from those accidents. Section 402(b) of the Act sets forth the minimum requirements with which the State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration, through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other requirements is entrusted to the Secretary.

The Secretary's authority under section 402 of the Act has been delegated to the Administrators of the National Highway Traffic Safety Administration and the Federal Highway Administration ("the agencies") for highway safety programs within their respective jurisdictions. In carrying out their delegated duties, the agencies have, over time, issued regulations, order, program manuals, and guidance memoranda implementing the requirements of section 402 and establishing procedures for the administration of State highway safety programs. The issuance of guidance materials has continued as the concept of the State highway safety program has evolved, with the result that guidance or procedures governing the section 402 program appear in a variety of different documents, many of which are now obsolete. The continuing presence of potentially conflicting guidance has led to confusion among some States as to current procedures.

On March 11, 1988, Federal grant-making agencies issued a common rule requiring consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and Federally recognized Indian tribal governments. The Department of Transportation's codification of that rule, with specific exceptions applicable to its programs (49 CFR part 18, "the Common Rule"), became effective, in part on March 12, 1988, and in full on October 1, 1988.

The Common Rule directed some fundamental changes in the administration of grants and cooperative agreements with State, local, and Indian tribal governments. Embodying the principles of federalism, it provided that in the areas of financial management, equipment, procurement, and administration of subgrants, States would expend and account for grant funds in accordance with their own laws and procedures. On July 14, 1988, a Departmental Order directed each of the modal administrations to implement the Common Rule, as it applies to agency grant programs (DOT Order 4600.9C).

The agencies appointed a task force to explore options for achieving greater regional uniformity in the procedural implementation of the program. The task force also considered the effects of the Common Rule on the agencies' then current program management procedures and determined that some changes in those procedures would be necessary. The task force recommended that uniform procedures for the approval, procedural implementation, and administration of the section 402 program, consistent with both section 402 of the Act and the provisions of the Common Rule, be codified in a rule and that inconsistent or obsolete materials be rescinded.

## Proposal

### A. General

The agencies propose to adopt, in a rule, uniform procedures governing State highway safety programs. The rule would include procedures for the submission, content, and approval of the State highway safety plan ("the HSP") (the document in which the State describes its proposed highway safety program and applies for Federal funds), and general requirements for implementation of the program. All duplicative, inconsistent, or obsolete guidance would no longer have effect. To that end, the agencies propose simultaneously to delete supplements A through I to 23 CFR 1204.4, which contain inconsistent and outdated information. The guidance contained in these supplements would be superceded by the applicable provisions of the proposed rule. The rescinding of inconsistent or outdated agency orders, program manuals, and other materials would be accomplished separately by notice or memorandum following the publication of a final rule.

It should be noted that while this Notice would also amend 23 CFR part 1205, Highway Safety Programs; Determinations of Effectiveness, it would not delete or amend the following

sections of the Code of Federal Regulations: 23 CFR part 1206, Rules of Procedure for Invoking Sanctions Under the Highway Safety Act of 1966; 23 CFR part 1208, National Minimum Drinking Age; 23 CFR part 1230, Highway Safety Program Standards—Applicability to Federally Administered Areas; 23 CFR part 1250, Political Subdivision Participation in State Highway Safety Programs; 23 CFR part 1251, State Highway Safety Agency and 23 CFR part 1252, State Matching of Planning and Administration Costs.

In accordance with the Department's July 14, 1988 Order, the agencies also propose to implement formally the provisions of the Common Rule, as it applies to the administration of the section 402 program. The proposed implementation would clarify the application of some of its sections to the unique requirements of the section 402 program, while leaving essentially unchanged the Common Rule's requirements.

The proposed action would combine or reference, in title 23, chapter II of the Code of Federal Regulations, the major requirements which apply to State highways safety programs. While a significant goal of this proposal action is to achieve uniformity in the procedural implementation of the section 402 program, it does not impose procedures which vary significantly from those which are currently being followed by the States and the agencies' field offices. Interested parties are encouraged to submit comments on any aspect of this proposed action. States are especially encouraged to comment on those portions that would implement the Federalism provisions of the Common Rule.

### B. Highlighted Provisions

**Three-year HSP.** Current procedures involve the submission of an annual HSP. As a result of the favorable response to NHTSA's pilot program testing a 3-year HSP, the proposed rule would authorize the submission of a 3-year HSP by any State, with advance notice to the approving official in each agency. The preparation and program approval of a 3-year HSP would assist both the States and the approving officials in long-range highway safety planning efforts. Administrative requirements for a 3-year HSP would continue to be imposed on a fiscal year basis. The obligation of funds would remain an annual requirement because funds for the section 402 program are appropriated by Congress on a fiscal year basis. Similarly, liquidation of obligations would occur annually, as provided by the Common Rule. The

annual reporting requirement would be retained for a 3-year HSP to assist the planning process in general, to provide timely notice of problems or concerns meriting further attention in the HSP, and because the scope and complexity of a single report covering a 3-year period would place undue strain on State resources.

**Agency Decisions.** Review and approval of the HSP, authorization of changes, and time-extensions for an HSP, which appear in §§ 1200.11, 1200.13, and 1200.31, respectively, are currently delegated to the Regional Administrators of both agencies. For FHWA, the authority has been redelegated to the FHWA Division Administrator in each state. This proposal refers to NHTSA Regional Administrators and FHWA Division Administrators as "approving officials".

**NHTSA Appeals.** A new provision is proposed which allows appeals of all important decisions by a NHTSA approving official in these and other sections of the proposed rule. The appeal would be to the Deputy Administrator of NHTSA.

**Obligation of Federal Funds.** In the past, States have expressed concern that delays in the appropriation process at the start of a fiscal year might result in a concomitant delay in authorization to incur expenses under a new HSP. Because the Agencies possess contract authority with respect to authorized section 402 funds, the continuity of the program is unaffected by appropriation delays. Agency obligation procedures would be clarified to alleviate this concern.

**Changes.** Section 1200.13 lists requirements imposed by the Common Rule under which permission must be sought for budget or programmatic changes. These requirements have been listed in terms which clarify their application to the section 402 program. Requirements which appear in the Common Rule but are irrelevant to the program are not included. The submission of the identified standardized forms for both changes requiring prior approval and those which do not require approval is necessary so that Federal accounting records may be adjusted to accurately reflect the status of funds.

**Equipment.** The proposed rule's requirements covering items identified in the Common Rule as "equipment" and "supplies" are identical in effect to the requirements of the Common Rule. However, the terms "major equipment" and "non-major equipment" would be substituted for the Common Rule's terms "equipment" and "supplies."

respectively, because the former terms more closely convey the terminology used in the section 402 program. This purely semantic distinction is made in recognition of the fact that many items common to the section 402 program that would be treated by the Common Rule as supplies (e.g., breathalizers, radar detectors) are not usually characterized by State program officials as supplies, but rather as types of equipment. These program officials are generally not the officials responsible for overall property control in the State, and they sometimes characterize property items in a manner which is inconsistent with the State categories. This has led to some confusion concerning the proper implementation of the Common Rule for the Section 402 program. Moreover, the Common Rule's requirement concerning disposition of supplies speaks only to "a residual inventory of unused supplies," leaving unaddressed the disposition of used non-expendable personal property, also falling within its definition of supplies. As a practical matter, unused supplies requiring disposition are not a prominent feature of the section 402 program (because of the program's continuing nature), but used items are commonplace and require guidance concerning disposition. The proposed rule would address these concerns by identifying two types of tangible personal property: Major Equipment and Non-Major Equipment. The definition of major equipment would be identical in effect to the definition of equipment in the Common Rule. A State could elect, in writing, to use its own definition of major equipment under the conditions stated in the proposed rule, which mirror the provisions governing equipment in the Common Rule. The management and disposition of major equipment would be in accordance with State laws and procedures, as provided by the Common Rule. Under major equipment, the proposed rule also restates the Common Rule's procedures covering the right of the Government to transfer title and those covering Federally furnished property. Non-major equipment would be defined as all tangible personal property not meeting the definition of major equipment, including supplies. This definition is equivalent to the definition of supplies in the Common Rule. Under the proposed rule, States would manage and dispose of all non-major equipment in accordance with State laws and procedures, except as otherwise provided by the Common Rule. All equipment, major and non-major, would be required to be used for the originally authorized grant purposes for as long as

the program need exists. Previous Inspector General audit reports have cited instances where grant-acquired property has been inadequately tracked or diverted to uses other than those authorized under the agency's statutory grant authority. Notable examples include a 1988 report citing twelve vehicles, one airplane, and various ancillary equipment with a total value of approximately \$80,000, a 1989 report citing unspecified nonexpendable personal property purchased by a State office of highway safety with Federal funds, "but not used by that office," and a 1990 report citing a printer, a specialized radio, video equipment, and ten other items with a total value in excess of \$15,000. Responding to the criticisms contained in these reports, the proposed rule would make it clear that diverting section 402 grant-acquired property away from highway safety related activities while a need still exists is not permissible. This is consistent with the large body of Federal grant law requiring that grantees use grant funds only for authorized grant purposes and only in accordance with the terms and conditions of the grant. The restriction on use would have no effect on the State's management of grant-acquired property or on their disposition of such property after the program need is fulfilled.

**Program Income.** The Common Rule provides that program income shall ordinarily be deducted from total allowable costs to determine net allowable costs, but provides for the use of identified alternative methods by regulation. Since the section 402 program is a formula grant program, a State is entitled to the full amount of its apportioned funds, with rare exceptions. Hence, use of the deduction method to reduce claimed costs would not result in a credit to the Government, as the State's entitlement to these funds would remain unaffected. The ultimate effect of using the deduction method in the section 402 program would be to add the full amount of reduced costs back into the program for the State's use. This result is equivalent to the one which would be achieved under the addition method identified in the Common Rule. For this reason, the agencies have proposed the addition method as the standard method for treatment of program income and, as provided by the Common Rule, the option to use the cost sharing or matching method only with the prior approval of the approving official.

**Closeout.** In accordance with the grant rule, the agencies propose that the

evaluation report be submitted within 90 days after the end of each fiscal year, include to closeout. Prior practices allowed the report to be submitted in June. The requirement to submit statistical evidence of recent trends in fatal, injury, and property damage crashes would be deleted in order to decrease the burden to the States, in view of the shortened timeframe. The requirement that States provide recent statistical trend data in the HSP as part of their problem identification would remain, however.

**Disposition of Unexpended Balances.** States have been required to identify the amount of unexpended funds remaining at the end of each fiscal year by program area. In addition, the use of MHTSA funds during the following fiscal year, after reprogramming, has been limited to program areas which existed in the HSP from which the funds were reprogrammed. The requirement to make such scope determinations in the course of reprogramming funds has limited the States' flexibility to direct resources to the most critical problem areas and is being eliminated. The proposed rule would retain the requirement that States identify by program area, on a one-time basis at the end of each fiscal year, all unexpended balances. However, the requirement to restrict the use of NHTSA funds in the subsequent fiscal year would be deleted.

**Section 1205.4 Amendments.** Proposed revisions to § 1205.4 would not affect existing procedures. The deleted provisions would be reorganized and appear instead as requirements in the sections of proposed part 1200 concerning submission and approval of the HSP and the Annual Evaluation Report.

## Impact Analyses

### A. Federalism Assessment

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

Highway safety is a national concern, and for this reason, Congress directed the Secretary of Transportation to ensure the implementation of effective State highway safety programs. In this proposed rule, we increase the flexibility of the States by implementing the procedures of a common rule for the administration of grants to State and local governments which has as its basis the principles of federalism. That rule recognizes that States possess unique

constitutional authority, resources, and competence to administer national grant programs, and provides for the application of State laws and procedures to many aspects of grant administration.

#### B. Economic Impacts

The agencies have analyzed the effect of this proposed action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking will not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Regulatory Impact Analysis nor a full Regulatory Evaluation is required.

#### C. Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. States will be the recipients of any funds awarded under the regulation and, accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

#### D. Environmental Impacts

The agencies have analyzed this proposed action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

#### E. Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a Highway Safety Plan and related forms to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) The requirement has been approved through April 30, 1992; OMB No. 2127-0003.

#### F. Comments to the Docket

The agencies are providing a 45-day comment period for interested parties to present data, views, and arguments on the proposed action. The agencies invite comments on the issues raised in this notice and any other issues commenters

believe are relevant to this action. All comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule, if one is issued, will be considered as suggestions for further rulemaking action. The agencies will continue to file relevant information in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified of receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

#### List of Subjects in 23 CFR Parts 1200, 1204, and 1205

Grant programs—transportation, Highway safety.

For the reasons set out in the preamble, title 23, chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The heading for subchapter A is added to read as follows:

#### SUBCHAPTER A—PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

2. In subchapter A, part 1200 is added to read as follows:

#### PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

##### Subpart A—General

- Sec.
- 1200.1 Purpose.
- 1200.2 Applicability.
- 1200.3 Definitions.

##### Subpart B—The Highway Safety Plan

- 1200.10 Preparation and submission.
- 1200.11 Review and approval.
- 1200.12 Apportionment and obligation of Federal funds.
- 1200.13 Changes.

##### Subpart C—Implementation and Management of the Highway Safety Program

- 1200.20 General.
- 1200.21 Equipment.
- 1200.22 Vouchers and project agreements.
- 1200.23 Program income.
- 1200.24 Compliance.
- 1200.25 NHTSA appeals.

##### Subpart D—Closeout

- 1200.30 Expiration of the HSP.
- 1200.31 Extension of the HSP.
- 1200.32 Final voucher and project reports.
- 1200.33 Annual evaluation report.
- 1200.34 Disposition of unexpended balances.
- 1200.35 Post-grant adjustments.
- 1200.36 Continuing requirements.

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

##### Subpart A—General

###### § 1200.1 Purpose.

This part establishes the requirements governing submission and approval of State Highway Safety Plans and prescribes uniform procedures for the implementation and management of State highway safety programs.

###### § 1200.2 Applicability.

The provisions of this part apply to States conducting highway safety programs in accordance with 23 U.S.C. 402, beginning with Highway Safety Plans submitted for Fiscal Year 1992.

###### § 1200.3 Definitions.

As used in this subchapter—

*Annual Evaluation Report* means the report submitted each year by each State which describes the accomplishments of its highway safety program for the preceding fiscal year.

*Approving Official* means a Regional Administrator of the National Highway Traffic Safety Administration for issues concerning NHTSA funds or program areas and a Division Administrator of the Federal Highway Administration for issues concerning FHWA funds for program areas.

*Carry-forward Funds* means those funds which a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed to complete ongoing activities.

*Contract authority* means the statutory language which authorizes the agencies to enter into an obligation without the need for a prior appropriation or further authorization from Congress. When exercised, contract authority creates a binding obligation on the United States for which Congress must make subsequent appropriations in order to liquidate the

obligations incurred pursuant to this authority.

*Contractor* means the recipient of a contract or subcontract under the HSP.

*FHWA* means the Federal Highway Administration.

*Fiscal year* means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.

*Governor* means the Governor of any of the fifty States, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

*Governor's Representative* means the Governor's Representative for Highway Safety, the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), an official of the Bureau of Indian Affairs who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

*Highway Safety Plan* or *HSP* means the Section 402 grant application document consisting of the plan submitted by a State describing the State's highway safety problems and detailing the projects the State plans to undertake to implement a highway safety program addressing those problems.

*Highway safety program* includes all of the projects planned or undertaken by a State or its subgrantees or contractors to address highway safety problems in the State.

*Major equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, or such other definition as a State may elect in accordance with the procedures in § 1200.21(b)(1) of this part.

*National Priority Program Area* means a program area identified in § 1205.3 of this chapter as eligible for Federal funding pursuant to 23 U.S.C. 402 because it encompasses a major highway safety problem which is of national concern and for which effective countermeasures have been identified.

*NHTSA* means the National Highway Traffic Safety Administration.

*Non-major equipment* means all tangible, personal property which does not meet the definition of major equipment, including supplies.

*Program area* means any area, including but not limited to a National Priority Program Area, which is eligible

or approved for Federal funding pursuant to 23 U.S.C. 402.

*Program income* means gross income received by the State or any of its subgrantees or contractors which is directly or indirectly generated by a Federally-supported project during the project performance period.

*Project* means any of the activities proposed or implemented under an HSP to address discrete or localized highway safety problems falling within one or more program areas.

*Reprogramming* means applying carry-forward funds to projects in a fiscal year subsequent to the one for which the funds were originally apportioned to the State.

"Section 402" means section 402 of title 23 of the United States Code.

*State* means any of the fifty States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

*Subgrantee* means a recipient of an award of financial assistance by a State in the form of money, or equipment in lieu of money, under an HSP.

## Subpart B—The Highway Safety Plan

### § 1200.10 Preparation and submission

#### (a) Time period covered by the HSP.

(1) Except as provided in paragraph (a)(2) of this section, a State shall submit an HSP for each fiscal year. The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be one fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part.

(2) A State may elect to submit an HSP once every three fiscal years, provided advance notice is given to the approving officials. The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be three consecutive fiscal years, unless extended in accordance with the provisions of § 1200.31 of this part. Obligation of Federal funds and authority to incur costs, however, shall be based on each fiscal year.

(b) *Content of the HSP.* Each State's HSP shall contain the following elements:

(1) *Certifications and assurances.* A statement containing certifications and assurances shall be signed by the Governor's Representative and shall satisfy the requirements of 49 CFR part 18 and other applicable law. A sample statement, which may from time to time

be amended to reflect changes in applicable law, shall be made available by each approving official.

(2) *Problem identification summary.* The problem identification summary will highlight highway safety problems throughout the State and briefly describe the countermeasures the State will employ to address these problems.

(3) *Description of and justification for program areas to be funded.* A State may identify and seek funding for projects, and related equipment purchases, within any National Priority Program Area or any other program area. National Priority Areas are identified in § 1205.3 of this chapter. Other program areas may, from time to time, be identified by statute, by rule, or by a State. For each program area for which Federal funding is sought, the following procedures shall apply:

(i) For National Priority Program Areas, the funding procedures at § 1205.4 of this chapter.

(ii) For program areas identified by statute, the funding procedures prescribed by the statute and implementing regulations or, in the absence of prescribed procedures, the funding procedures at § 1205.4 of this chapter.

(iii) For program areas identified by a State and not falling within paragraphs (b)(3)(i) or (b)(3)(ii) of this section, the funding procedures at § 1205.5 of this chapter.

(4) *Discussion of planning and administration needs.* Planning and administration needs shall be discussed in sufficient detail to justify proposed expenditures. Proposed and actual expenditures shall comply with the Federal contribution and State matching requirements of part 1252 of this chapter.

(5) *Description of training needs.* Training needed to support or further the objectives of the HSP should be described in adequate detail to justify proposed expenditures. Only training that supports or furthers the objectives of the HSP shall be eligible for funding.

(6) *Supporting financial documentation.* Financial documentation supporting the HSP shall include the Highway Safety Program Cost Summary, Standard Form HS-217, reflecting the State's proposed allocation of funds among program areas and for planning and administration needs, completed in accordance with the form's written instructions, and such other financial documentation as may be required by law.

(c) *Special funding conditions.* The planning and contents of an HSP shall

reflect the following funding requirements:

(1) *Political subdivision participation.* Proposed expenditures under the HSP shall comply with the requirements for political subdivision participation contained in part 1250 of this chapter.

(2) *NHTSA project length.* NHTSA funding support for a specific project under an HSP shall ordinarily not exceed three years. However, a funding extension beyond three years may be approved in writing by the NHTSA approving official on a year-by-year basis, provided the project has demonstrated great merit or the potential for significant long-range benefits and includes a cost assumption plan requiring, at a minimum, 35 percent non-Federal support for the fourth year and 50 percent non-Federal support for the fifth and sixth years. Under no circumstances will a project be funded beyond six years. A denial of a project funding extension shall be in writing by the NHTSA approving official and shall be subject to the appeal procedures of § 1200.25 of this part. The project length requirements are not applicable to planning and administration activities; program management (e.g., program area coordinators' or managers' oversight of the continuing development, implementation and evaluation of 402 or related State/locally supported activities); mandatory (earmarked) programs; training projects which support activities within an identified program area; or other activities which are required by statute.

(d) *Due date.* The completed HSP must be received by the approving officials no later than August 1 preceding the fiscal year for which it applies or, in the case of a 3-year HSP, no later than August 1 preceding the first fiscal year for which it applies. For a State operating under a 3-year HSP, any updates for the second and third years which the State elects to submit must be received by the approving officials no later than August 1 preceding the fiscal year for which the updates apply. The State shall furnish three copies of its HSP, or updated HSP for a State operating under a 3-year HSP, to the NHTSA and FHWA approving officials. Failure to meet these deadlines may result in delayed approvals.

#### § 1200.11 Review and approval.

(a) *Review.* (1) Each approving official shall verify that each HSP complies with the basic requirements of § 1200.10(b)-(c) of this part. Where an HSP is found not in compliance, the approving official will advise the State to take such action

as necessary to bring the HSP into compliance.

(2) An HSP determined to satisfy the basic requirements of paragraph (a)(1) of this section shall be further reviewed to ensure that the State has proposed a highway safety program which justifies the commitment of Federal funds. Each approving official shall have the discretion to require further clarification or amendment of any portion of an HSP which does not adequately establish the existence of a bona fide highway safety problem, the selection of countermeasures reasonably calculated to address the problem, and the efficient proposed use of Federal funds.

(3) Each approving official shall provide States with reasonable notice and opportunity to amend portions of HSPs which are found inadequate. Such notice and opportunity to amend shall facilitate the informal resolution of problems in the HSP, to the maximum extent practicable, prior to the time by which the approving official must render a written decision in accordance with paragraph (b) of this section.

(b) *Approval/Conditional Approval/Disapproval.* (1) If after reasonable notice and opportunity to amend pursuant to paragraph (a)(3) of this section, the approving official determines that a State has provided information in the HSP which is inadequate to justify a proposed use of Federal funds, or has failed to comply with other requirements of this part or applicable law, the approving official shall conditionally approve or disapprove the relevant portion(s) of the HSP, as appropriate. Otherwise, the approving official shall approve the HSP, except that in no case shall the approving official approve an HSP which is submitted without the statement required by § 1200.10(b)(1) of this part until receipt of such statement.

(2) Approval, conditional approval, or disapproval of the HSP, in whole or in part, shall be in writing, dated, and signed by the approving official, and shall be sent to the Governor, with a copy to the Governor's Representative, within 30 days of receipt of the HSP by the agency, unless extended by mutual agreement of the approving official and the Governor's Representative.

(3) For any portion of the HSP which is conditionally approved or disapproved, a detailed explanation of conditions or reasons for disapproval shall be provided in writing by the approving official to the Governor's Representative. Conditional approval may include a requirement for project approval of Federally funded activities.

(4) All approvals and conditional approvals sent to the Governor's Representative shall state the total dollar amount of the program approved or conditionally approved and shall contain the following statement:

By this letter, \_\_\_\_\_'s (State) fiscal year 19\_\_\_\_ Highway Safety Plan, as submitted on \_\_\_\_\_(Date), is hereby approved, subject to any conditions or limitations set forth below. Authorization to incur costs is subject to the availability of funds during fiscal year 19\_\_\_\_ (including carry-forward funds available for reprogramming), and in no event permits the State to be reimbursed for expenses in excess of amounts authorized by law. Reimbursement is contingent upon the submission of Standard Forms HS-62 and HS-217 within 60 days after either the beginning of Fiscal Year 19\_\_\_\_ or the date of this letter, whichever is later.

#### § 1200.12 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute funds available for obligation under section 402 to the States and provide a statement of any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute a part of the funds authorized under section 402 contract authority to ensure program continuity and shall provide a statement of any conditions or limitations imposed by law on the use of the funds. Upon appropriation of section 402 funds, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, promptly adjust the apportionment, in accordance with law.

(c) The Federal share of expenses incurred by a State against any funds distributed under paragraphs (a) or (b) of this section shall constitute an obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document and not exceeding the total dollar amount of the approved program identified in § 1200.11(c)(4) of this part. No reimbursement of State expenses shall be made until the State submits and the approving official approves Forms HS-62 and HS-217.

**§ 1200.13 Changes.**

(a) *Changes requiring prior approval.* Each State shall obtain the written approval of the approving official prior to implementing or allowing subgrantees or contractors to implement any of the following changes:

(1) Any revision which would result in the need for additional Federal funding beyond that which is already apportioned or distributed to the State;

(2) Any request to extend the period during which costs may be incurred, as provided in § 1200.31 of this part;

(3) Contracting out, subgranting, or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the HSP, but not including the procurement of major and non-major equipment and general support services approved under the HSP;

(4) Changes in key persons specified in the HSP; or

(5) Any change in the scope of objectives of a project. For the purposes of this paragraph, each of the following shall be considered a change in scope of objectives:

(i) Any transfer of funds into or out of a program area which, either singly or in combination with past movements of funds, exceeds ten percent of the approved funding for the program area (for the purposes of determining when the ten percent threshold is reached, amounts are cumulated additively regardless of whether the funds are transferred into or out of the program area; e.g., +6 percent - 5 percent = 11 percent, and not 1 percent; the plus represents moving funds into and the minus represents moving funds out of a program area);

(ii) Any transfer of funds allotted for training allowances which exceeds 10 percent of the approved funding for the program area (i.e., from direct payments to trainees to other expense categories);

(iii) Any redirection of the goals or of the effort devoted to accomplishing the goals of a project approved under the HSP.

(b) *Approval procedures.* (1) States shall request prior approval for changes by submitting a written request to the approving officials, accompanied by Forms HS-62 and HS-217 and/or such other information as is necessary to explain the proposed change.

(2) The approving official shall indicate approval in writing, and provide a signed Form HS-62 if applicable, to the Governor's representative normally within 10 working days after receipt of the request.

(3) Subject to the appeal provisions of § 1200.25 of this part, the approving

official may disapprove a change in writing, with a brief explanation of the reasons therefor. Any such disapproval shall normally be made within 10 working days after receipt of the request.

(c) *Procedures for changes not requiring prior approval.* States shall provide documentary evidence of changes not requiring prior approval to the approving official by submitting amended Forms HS-62 and HS-217, and such other information as is necessary to explain the change.

**Subpart C—Implementation and Management of the Highway Safety Program****§ 1200.20 General.**

Except as otherwise provided in this subpart and subject to the provisions herein, the requirement of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs carried out under 23 U.S.C. 402.

**§ 1200.21 Equipment.**

(a) *All equipment—(1) Title.* Except as provided in paragraphs (b)(3) and (b)(4) of this section, title to equipment acquired under the HSP will vest upon acquisition in the State or its subgrantee, as appropriate.

(2) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, and neither the State nor any of its subgrantees or contractors shall encumber the title or interest while such need exists.

(b) *Major equipment—(1) Choice of definition.* A State may elect to use its own definition of major equipment, provided such definition would at least include all items captured by the definition appearing in § 1200.3(1) of this part. Such election shall be made in writing by the Governor's Representative to the approving official, in the absence of which the definition in § 1200.3(1) of this part shall apply.

(2) *Management and disposition.* Subject to the requirements of paragraphs (a)(2), (b)(3), and (b)(4) of this section, States and their subgrantees and contractors shall manage and dispose of major equipment acquired under the HSP in accordance with State laws and procedures.

(3) *Federally-owned major equipment.* In the event a State or its subgrantee is provided federally-owned major equipment:

(i) Title shall remain vested in the Federal Government;

(ii) Management shall be in accordance with Federal rules and

procedures, and an annual inventory listing shall be submitted;

(iii) The State or its subgrantee shall request disposition instructions from NHTSA or FHWA, as appropriate, when the item is no longer needed in the program.

(4) *Right to transfer title.* NHTSA or FHWA may reserve the right to transfer title to major equipment acquired under the HSP to the Federal Government or to a third party when such third party is otherwise eligible under existing statutes. Any such transfer shall be subject to the following requirements:

(i) The property shall be identified in the grant or otherwise made known to the State in writing;

(ii) NHTSA or FHWA, as applicable, shall issue disposition instructions within 120 calendar days after the end of the project for which the property was acquired, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

(c) *Non-major equipment.* Subject to the requirements of paragraph (a)(2) of this section and except as otherwise provided in 49 CFR part 18, States and their subgrantees and contractors shall manage and dispose of non-major equipment acquired under the HSP in accordance with State laws and procedures.

**§ 1200.22 Vouchers and project agreements.**

Each State shall submit to the approving official vouchers documenting all expenses incurred, regardless of whether the State receives advance payments or is reimbursed for expenditures under the HSP. Each voucher shall be accompanied by a copy of the project agreement(s), and any amendments thereto, under which expenses have been incurred, unless a copy of such agreement(s) (or amendments, if applicable) has been previously provided.

(a) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

- (1) Program Area/Project Number;
- (2) Federal funds obligated;
- (3) Amount of Federal funds allocated to local benefit (provided bi-annually only—March 31 and September 30 of each calendar year);
- (4) Cumulative Total Cost to Date;
- (5) Cumulative Federal Funds Expended;
- (6) Previous Amount Claimed;
- (7) Amount Claimed this Period;
- (8) Special matching rate (i.e., sliding scale rate) authorized under 23 U.S.C. 120(a), if used, determined in

accordance with the applicable NHTSA Order.

(b) *Submission requirements.* At a minimum, vouchers and supporting project agreements shall be submitted to the approving official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a state receives funds by letter of credit or electronic transfer at an annualized rate of one million dollars or more, the vouchers and agreements shall be submitted on a monthly basis, no later than 15 working days after the end of each month. Failure to meet these deadlines may result in delayed reimbursement.

#### § 1200.23 Program income.

(a) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds.

(b) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(c) *Use of program income—(1) Addition.* Program income shall ordinarily be added to the funds committed to the HSP. Such program income shall be used to further the objectives of the project under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the approving official. Such use shall not increase the commitment of Federal funds.

#### § 1200.24 Compliance.

Where a State is found to be in noncompliance with the terms of the HSP or applicable law, the approving official may apply the special conditions for high-risk grantees or the enforcement procedures of 49 CFR part 18, as appropriate and in accordance with their terms.

#### § 1200.25 NHTSA appeals.

Review of any written decision by the NHTSA approving official under this part, including a disapproval or conditional approval of any part of an HSP under § 1200.1(b) of this part, a disapproval of a request for a changed under § 1200.13(b)(3) of this part, a

decision to impose special conditions or restrictions or to seek remedies under § 1200.24 of this part, and a denial of a funding extension under § 1200.10(c)(2) of this part, may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative, to the NHTSA approving official. Such appeal shall be forwarded promptly to the NHTSA Deputy Administrator through the NHTSA Regional Coordinator. The decision of the Deputy Administrator shall be final and shall be transmitted to the Governor's Representative through the approving official.

#### Subpart D—Closeout

##### § 1200.30 Expiration of the HSP.

Unless extended in accordance with the provisions of § 1200.31 of this part, a one-year HSP shall expire on the last day of the fiscal year to which it pertains and a three-year HSP shall expire on the last day of the third fiscal year to which it pertains. The State and its subgrantees and contractors may not incur costs past the expiration date.

##### § 1200.31 Extension of the HSP.

Upon written request by the State, specifying the reasons therefor, the approving official may extend the expiration date for some portion of an HSP by a maximum of 90 days. The approval of any such request for extension shall be in writing, shall specify the new expiration date, and shall be signed by the approving official. If an extension is granted, the State and its subgrantees and contractors may continue to incur costs under the HSP until the new expiration date, and the due dates for other submissions covered by this section shall be based upon the new expiration date. However, in no case shall any extension be deemed to authorize the obligation of additional Federal funds beyond those already obligated to the State by the Federal Government, nor shall any extension be applicable to the submission of the Annual Evaluation Report. Only one extension shall be allowed for each HSP.

##### § 1200.32 Final voucher and project reports.

Each State shall submit a final voucher which satisfies the requirements of § 1200.22(a) of this part and copies of project reports for all projects approved under the HSP within 90 days after the expiration of each fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part. The final voucher

constitutes the final request for payment for each HSP.

##### § 1200.33 Annual evaluation report.

Within 90 days after the expiration of the fiscal year, each State shall submit to the approving official an Annual Evaluation Report describing the accomplishments of the highway safety program under the HSP for the fiscal year. The report shall include the following information.

(a) *Statewide overview.* A three to five page overview of statewide accomplishments in highway safety, regardless of funding source;

(b) *Report by program area.* For each funded program area, an evaluation of actual program accomplishments and costs compared to those set forth in the HSP, noteworthy projects underway or completed, and successes, innovative solutions, problems, and failures;

(c) *Legislative and administrative accomplishments.* A discussion of significant administrative and legislative accomplishments which promoted the goals of highway safety; and

(d) *Status of remedial actions.* An evaluation of the progress the State is making in correcting deficiencies identified through program and financial management reviews conducted by the approving officials or by the State.

##### § 1200.34 Disposition of unexpended balances.

Any funds which remain unexpended after payment of the final voucher shall be carried forward, credited to the State's highway safety account for the new fiscal year, and be made immediately available for reprogramming under a new HSP or under the next year of a continuing three-year HSP, subject to the approval requirements of § 1200.11(b) of this part.

##### § 1200.35 Post-grant adjustments.

The closeout of an HSP does not affect the ability of NHTSA or FHWA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

##### § 1200.36 Continuing requirements.

The following provisions shall have continuing applicability, notwithstanding the closeout of an HSP:

(a) The requirement to use all equipment for the originally authorized grant purposes for as long as needed for those purposes, as provided in § 1200.21(a)(2) of this part;

(b) The management and disposition requirements for major equipment, as provided in § 1200.21(b)(2) of this part;

(c) The audit requirements and records retention and access requirements of 49 CFR part 18.

#### **PART 1204—UNIFORM GUIDELINES FOR STATE HIGHWAY SAFETY PROGRAMS**

3. The authority citation for part 1204 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

##### **§ 1204.4 [Amended]**

4. In § 1204.4, supplements A through I, are removed.

#### **PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS**

5. The authority citation for part 1205 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

6. In § 1205.4, the introductory text and paragraph (a) are revised, paragraphs (c) and (e) are removed, and paragraph (d) is redesignated as paragraph (c) and revised to read as follows:

##### **§ 1205.4 Funding Procedures for National Priority Program Areas.**

A State planning to use funds under 23 U.S.C. 402 to support a program that is within a National Highway Safety Priority Program Area shall be subject to the following procedures:

(a) The State shall describe each highway safety problem within such Priority Area and any countermeasure proposed to decrease or stabilize the problem, and provide recent statistical trend data concerning injury, fatal, and property damage crashes to support the problem and countermeasure identifications.

(c) NHTSA and/or FHWA, as applicable, shall review the information provided under paragraphs (a) and (b) of this section in accordance with the procedures of § 1200.11 of this chapter.

Issued on: June 24, 1991.

**Jerry Ralph Curry,**

*Administrator, National Highway Traffic Safety Administration.*

**Thomas D. Larson,**

*Administrator, Federal Highway Administration.*

[FR Doc. 91-15368 Filed 6-25-91; 3:25 pm]

BILLING CODE 4910-50-M

#### **DEPARTMENT OF THE INTERIOR**

##### **Office of Surface Mining Reclamation and Enforcement**

##### **30 CFR Part 934**

##### **North Dakota Permanent Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Part of the proposed amendment is in response to changes requested by OSM through its 30 CFR part 732 state program amendment process and part is discretionary changes initiated by the North Dakota Legislature.

OSM notified North Dakota of the required changes to their program by letters dated: November 17, 1989; and February 7, 1990 (Administrative Record Nos. ND-J-01; and ND-K-01, respectively). The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations and improve operational efficiency.

This notice sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4 p.m., mdt, July 29, 1991. If requested, a public hearing on the proposed amendment will be held on July 23, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., mdt, on July 15, 1991.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett, Director of the Casper Field Office, at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one copy of the

proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Edward J. Englerth, Director, Reclamation Division, Public Service Commission, Capitol Building, Bismarck, ND 58505-0165, Telephone: (701) 224-4096.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Director, Casper Field Office, on telephone number (307) 261-5776.

##### **SUPPLEMENTARY INFORMATION:**

##### **I. Background on the North Dakota Program**

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. General background information on the North Dakota program including the Secretary's findings and the disposition of comments can be found in the December 15, 1980 *Federal Register* (45 FR 82246). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, and 934.14, 934.15, 934.16 and 934.30.

##### **II. Proposed Amendment**

By letter dated June 12, 1991 (Administrative Record No. ND-M-01), North Dakota submitted a proposed amendment to its program pursuant to SMCRA. North Dakota submitted the proposed amendment to the North Dakota Century code (NDCC) and the North Dakota Administrative Code (NDAC) in response to OSM's 30 CFR 732.17 notifications of November 17, 1989; and February 7, 1990 (Administrative Record Nos. ND-J-01 and ND-K-01, respectively).

The sections of the program that North Dakota proposes to add or amend that are subject to review are: NDCC 38-12.1 Exploration Data; NDAC 43-02-01 Coal Exploration; NDAC 38-14.1 Surface Mining and Reclamation Operations; and NDAC 69-05.2 Termination of Jurisdiction.

##### **III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. on July 15, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, a hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

### Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES". A written summary of each meeting will be made a part of the administrative record.

### List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 21, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-15377 Filed 6-27-91; 8:45 am]

BILLING CODE 4319-05-M

### 30 CFR Part 946

#### Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption

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

**ACTION:** Proposed rule; reopening and extension of comment period on proposed amendment.

**SUMMARY:** On May 23, 1991 (56 FR 23664), OSM announced receipt of revisions to a previously proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated April 18, 1991 (Administrative Record No. VA-793), Virginia had submitted additional information to both support and modify its proposed amendment dated October 1, 1990 (Administrative Record No. VA-768), which responded to two 30 CFR 732.17(f)(1) notifications (Administrative Record Nos. VA-743 and VA-749). The proposed amendment includes changes in Virginia's program relating to revegetation standards for success, siltation structures and impoundments, termination of jurisdiction, roads and support facilities, coal exploration, probable hydrologic consequences determinations, and permitting obligations relative to reclamation. Also included are changes to the regulations relative to the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, and regulations concerning prime farmland and coal preparation plants that are not located within the permit area of a mine. In connection with the revision submitted by Virginia on April 18, 1991, OSM reopened and extended the public comment period on Virginia's October 1, 1990, proposed amendment. In announcing the revisions to the State's original proposed amendment, OSM failed to identify revisions to the State program at VR 480-03-19.773.16(c)(4)(ii) and (c)(7). Therefore, OSM is reopening and extending the comment period. OSM will consider the new information, the existing proposed amendment, and any previous comments when making a final decision on the proposed amendment.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection and the comment period during which interested parties may submit written comments on the proposed amendment.

**DATES:** Written comments must be received on or before 4 p.m. on July 15, 1991.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.  
Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-8100.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, *Federal Register* (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

##### II. Discussion of Amendments

By letter dated October 1, 1990 (Administrative Record No. VA-768), Virginia submitted a proposed amendment to its program pursuant to SMCRA. OSM announced in the October 31, 1990, *Federal Register* (55 FR 45811-45814) receipt of the amendment and invited public comment. By letter dated March 20, 1991 (Administrative Record No. VA-792), OSM notified Virginia of 25 items contained in the amendment that required either clarification or revision. By letter dated

April 18, 1991 (Administrative Record No. VA-793), Virginia submitted clarifications and revisions to the proposed amendment. OSM announced in the May 23, 1991, *Federal Register* (56 FR 23664) receipt of the clarifications and revisions and invited public comment. However, OSM failed to discuss two revisions which are described below.

Virginia has revised VR 480-03-19.773.16 (c)(4)(ii) and (c)(7) by deleting reference to spillway design storm criteria in order to be consistent with VR 480-03.19.816/817.49(b)(7).

### III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, and Underground mining.

Dated: June 21, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-15378 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### 42 CFR Part 100

RIN 0905-AD25

#### Vaccine Injury Compensation: Calculation of Cost of Health Insurance

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Subtitle 2 of title XXI of the Public Health Service Act (PHS), as enacted by the National Childhood Vaccine Injury Act of 1986, and as amended, governs the National Vaccine

Injury Compensation (NVIC) Program. The NVIC Program, administered by the Secretary, provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Claims Court. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary." It is the purpose of this proposed rule to set out the amount to be deducted from the award of compensation which would reflect the average cost of a health insurance policy.

**DATES:** Comments must be submitted on or before August 27, 1991.

**ADDRESSES:** Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHP), Health Resources and Services Administration (HRSA), room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHP, room 8A-55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Balbier, Director, Division of Vaccine Injury Compensation, 6001 Montrose Road, room 702, Rockville, Maryland 20852; telephone number: 301 443-6593.

**SUPPLEMENTARY INFORMATION:** Under the National Vaccine Injury Compensation Program, 42 U.S.C. 300aa-10 *et seq.*, as amended, an individual may file petition in the United States Claims Court for compensation for vaccine-related injuries or death. The Secretary is named by the Act as Respondent in these proceedings and carries out other functions under the Act. The Secretary's authorities under the Program established by the Act have been delegated to the Health Resources and Services Administration.

The elements of compensation to be awarded to a successful petitioner are set out in section 2115 of the Public Health Service Act, 42 U.S.C. 300aa-15. Subsection (a)(3)(B) provides specifically for compensation for lost earnings for a person who has sustained a vaccine-related injury before attaining the age of 18, and whose earning capacity is or has been impaired sufficiently to anticipate that such person is likely to suffer impaired earning capacity at age 18 and beyond. The injured person would be eligible to

receive compensation for loss of earnings, after the age of 18, which are calculated on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary." The wage data are taken from the Employment and Earnings survey done by the Department of Labor, Bureau of Labor Statistics. (Subsection (a)(3)(A) provides specifically for payment of lost earnings for individuals injured after reaching age 18 and does not include deductions for taxes and the cost of health insurance.)

The Department is proposing to set out the amount to be deducted from the award of compensation which would reflect the average cost of a health insurance policy. Based on data from a 1989 survey by The Health Insurance Association of America (HIAA), the average monthly premium cost for individuals covered under employment-related group insurance was estimated to be \$117.00 in 1989. The survey reported the average costs of seven kinds of coverage: Conventional plans, both managed and unmanaged; nonpreferred provider and preferred provider; and health maintenance organizations, including individual practice association, staff/group, and hybrid arrangements. One hundred seventeen (\$117) dollars is a weighted average of these costs. The results of the survey were published in the journal of Health Affairs, Vol. 9, No. 3, Fall 1990. The Department is proposing to use this survey to establish a baseline figure based upon its being the most accurate and complete analysis available.

It is proposed that this figure be indexed periodically by the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City Average) published by the United States Bureau of Labor Statistics. This index will be used because it reflects changes in the cost of medical care which underlie health insurance. The period covered by the Health Affairs survey ended on July 1, 1989. Accordingly, the Department has applied the 13.8 percent change in the index covering the period July 1, 1989, until December 31, 1990, to the baseline figure of \$117.00, resulting in a preliminary figure for 1990 of \$133.00. When this rule is published in the *Federal Register* in final form, the Department will update that figure as appropriate. Thereafter, the Department will file updated figures with the United States Claims Court and will list the changes in the index by publishing a notice in the *Federal Register* from time to time as determined by the Secretary.

If, over time, the average cost of health insurance, as calculated by the method described above, significantly differs from subsequent HIAA survey results or other authoritative sources then available, the Secretary will consider appropriate revisions to this rule.

A second approach is also being considered. Comments on this alternate method are also welcome. The Department recognizes that the medical component of the CPI only reflects changes in the cost of health care services. Other factors, which affect the cost of health insurance, such as higher utilization of health care services, the added expense of certain medical technological advances, and coverage decisions by insurers, are not fully taken into account by the CPI. Limited data available to the Department suggest that in recent years increases in the cost of health insurance have outpaced increases in the medical component of the CPI by approximately 2 percent per year.

Therefore, the second method being considered would inflate the baseline figure not only by the medical component of the CPI but also by the additional 2 percent that reflects the increases associated with higher utilization, technological advances and coverage decisions. Using this method against the baseline figure of \$117.00 results in an estimate for 1990 of \$137.00.

#### Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

#### Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980, the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, this proposed rule will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an

initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that this proposed rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

#### Paperwork Reduction Act of 1980

This proposed rule has no information collection requirements.

#### List of Subjects in 42 CFR Part 100

Biologics, Compensation, Health insurance, Immunizations.

Accordingly, it is proposed to amend title 42 of the Code of Federal Regulations by adding a new Part 100, "Vaccine Injury Compensation," as set forth below.

Dated: January 29, 1991.

James O. Mason,  
*Assistant Secretary for Health.*

Approved: May 9, 1991.  
Louis W. Sullivan,  
*Secretary.*

#### PART 100—VACCINE INJURY COMPENSATION

Sec.

100.1 Applicability.

100.2 Average cost of a health insurance policy.

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as amended (42 U.S.C. 300aa-15).

##### § 100.1 Applicability.

This regulation applies to the National Vaccine Injury Compensation (NVIC) Program under subtitle 2 of title XXI of the Public Health Service (PHS) Act.

##### § 100.2 Average cost of a health insurance policy.

For purposes of determining the amount of compensation under the NVIC Program, section 2115(a)(3)(B) of the PHS Act, 42 U.S.C. 300aa-15(a)(3)(B), provides that certain individuals are entitled to receive an amount reflecting lost earnings, less

certain deductions. One of the deductions is the average cost of a health insurance policy, as determined by the Secretary of Health and Human Services. The Secretary has determined that the average cost of a health insurance policy is \$ \_\_\_\_\_.00 per month. (As of December 31, 1990, the correct figure would have been either \$133.00 or \$137.00, depending on which of the approaches outlined in the preamble is finally adopted; when a final rule is published, the operative figure at the time, using whatever approach is finally adopted, will be inserted here.) This amount will be revised to reflect the changes in the medical care component of the Consumer Price Index (All Urban Consumers, U.S. City Average), published by the United States Bureau of Labor Statistics. The revised amounts will be effective upon their delivery by the Secretary to the United States Claims Court, and the amount will be published in a notice in the *Federal Register* from time to time as determined by the Secretary.

[FR Doc. 91-15434 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-15-M

#### Health Care Financing Administration

#### 42 CFR Part 424

[BPD-709-P

RIN 0938-AF01

#### Medicare Program; Allowing Certifications and Recertifications by Nurse Practitioners and Clinical Nurse Specialists for Certain Services

AGENCY: Health Care Financing Administration (HFA), HHS.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would implement section 6028 of the Omnibus Budget Reconciliation Act of 1989, which authorizes nurse practitioners and clinical nurse specialists working in collaboration with a physician to certify and recertify that extended care services are needed or continue to be needed.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 27, 1991.

**ADDRESSES:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, attention: BPD-709-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-C, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, room 3206, New Executive Office Building, Washington, DC 20503, attention: Allison Herron.

In commenting, please refer to file code BPD-709-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-C of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Thomas Hoyer (303) 966-4607.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Prior to the enactment of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), section 1814(a)(2)(B) of the Act required that, in the case of extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services which, as a practical matter, can only be provided in skilled nursing facility (SNF) on an inpatient basis.

The physician certification requirements were included in the law to ensure that patients require a level of care which is covered by the program and because the physician is a key figure in determining utilization of health services.

Section 2183 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), allowed physician assistants and nurse practitioners under the general

supervision of a physician to do recertification (but not certifications) of certain services for Medicaid eligibles. Section 6028 of Public Law 101-239 amended section 1814(a)(2) of the Act to allow, in the case of extended care services, a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but is working in collaboration with a physician, to certify and recertify that extended care services are needed to continue to be needed.

Current regulations located at 42 CFR part 424, concerning conditions for Medicare payments, specify that a physician must certify and recertify the need for services. Regulations located at § 424.20 provide Medicare Part A coverage for posthospital SNF care furnished by a SNF or a hospital with a swing-bed approval only if a physician certifies and recertifies the need for services. Section 424.20(a)(2) contains certification requirements for certain swing bed patients under which a physician must certify that transfer is not medically appropriate. Also, § 424.20(e) provides that certification and recertification statements may be signed by the physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case.

**II. Provisions of the Regulations**

In accordance with section 1814(a)(2)(B) of the Act, we would amend 42 CFR part 424, which pertains to conditions for Medicare payments. We propose to revise §§ 424.1(b)(1) and 424.5(a)(4) pertaining to the general provisions of part 424 by deleting the statement that only a physician can certify and recertify the need for extended care services. We propose to revise § 424.10(a), which specifies that certifications and recertifications must be made only by a physician, to permit a nurse practitioner or clinical nurse specialist to certify and recertify the need for services.

We propose to revise § 424.11(b), which specifies procedures for obtaining certifications and recertifications, to remove the requirement that only a physician can certify and recertify the need for services. We would add a new § 424.11(e)(4) to specify that a nurse practitioner or clinical nurse specialist could certify and recertify that extended care services are needed or continue to be needed.

We propose to revise § 424.20(e), which pertains to the requirements for posthospital SNF care, by adding a new

provision to specify that the signer of the certification and recertification may be a nurse practitioner or clinical nurse specialist, neither of whom has a direct or indirect employment relationship with the facility, but is working in collaboration with a physician. In this section we also propose to explain that "collaboration" means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services must be delivered within the scope of the practitioner's professional expertise as defined and as licensed by the State, with medical direction and appropriate supervision as provided for in guidelines jointly developed between the practitioner and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

Public Law 101-239 did not amend section 1883(d)(2)(A) of the Act, which requires that for swing bed hospitals with more than 49 beds that are approved after March 31, 1988, the extended care patient's physician has 5 days, beginning on the availability date, to certify that the transfer of the extended care patient is not medically appropriate. Therefore, we are not proposing to make any changes to § 424.20(b)(2), which reflects this section of the Act. However, we are revising the authority citations for part 424 to include § 1883(d)(2) of the Act, since that section contains the authority for § 424.20(b)(2).

**III. Response to Comments**

Because of the large number of items of correspondence we normally receive on proposed regulations, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this proposed rule, and, if we proceed with a final rule, we will respond to the comments in the final rule.

**IV. Information Collection Requirements**

Section 424.20 of this proposed rule contains information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) The information collection requirements concern signatures for certification and recertification statements for extended care services. The respondents who would be responsible are physicians, nurse practitioners or clinical nurse

specialists working in collaboration with a physician. Public reporting burden for this collection of information is estimated to be (estimated to be provided before final publication) minutes/hours per response. A notice will be published in the *Federal Register* after approval is obtained.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

#### V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, physicians are considered to be small entities. We also consider nurses who work on a consulting basis or who are self-employed to be small entities. Individuals are not considered as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The committee report to section 6028 of Public Law 101-239 did not provide any specific rationale for expanding the requirement for physician certification and recertification to include nurse

practitioners and clinical nurse specialists. However, in the past Congress has looked at Medicare and Medicaid certification and recertification requirements and chosen to amend only certain parts of them under the Medicaid program. For instance, section 2183 of Public Law 97-35 amended section 1903(g)(1)(A) of the Act to allow physician assistants and nurse practitioners to recertify the continued need for inpatient (hospital, SNF and ICF) services. According to the legislative report which accompanied this law, (H.R. Rep. No. 97-158, 97th Cong., 1st Sess., (1981)), Congress found physician assistants and nurse practitioners, under the supervision of physicians, were well qualified to perform a recertification of a patient's need for continued inpatient care. We believe that Congress, since they passed the legislation, would also find nurse practitioners and clinical nurse specialists qualified to certify and recertify that extended care services are needed or continue to be needed.

The proposed rule states that in order for nurse practitioners and clinical nurse specialists to certify or recertify that extended care services are needed or continue to be needed, they cannot have a direct or indirect employment relationship with the facility. However, we believe that since the nurse practitioner or clinical nurse specialist must work in collaboration with a physician, as defined in the preamble and regulations text (proposed § 424.20(e)(2)), and have knowledge of the case, the nurse practitioner or clinical nurse specialist would be familiar with the procedures necessary to certify or recertify. The implementation of the provision to allow nurse practitioners and clinical nurse specialists to certify and recertify would be beneficial to physicians since this would free physicians to perform other procedures that require the full skill of his or her profession.

We have determined that this proposed rule, in itself, would not produce any effects that would meet any of the criteria of E.O. 12291; therefore, a regulatory impact analysis under E.O. 12291 is not required. For the same reasons, we have determined and the Secretary certifies that this proposed rule would not have a significant effect on a substantial number of small entities or have any adverse effects on small rural hospitals. Thus, a regulatory flexibility analysis under the RFA and rural impact analysis under section 1102(b) of the Act are not required.

#### V. List of Subjects in 42 CFR 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR part 424 would be amended as set forth below:

#### PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 is revised to read as follows:

**Authority:** Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871, 1872 and 1883(d)(2) of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395g(e) and (f), 1395hh, 1395ii and 1395tt(d)(2)).

#### Subpart A—General Provisions

2. Subpart A is amended as follows:

a. In § 424.1, the introductory language for paragraph (b) is republished and paragraph (b)(1) is revised to read as follows:

##### § 424.1 Basis and scope.

(b) *Scope.* This part sets forth certain specific conditions and limitations applicable to Medicare payments and cites other conditions and limitations set forth elsewhere in this chapter. This Subpart A provides a general overview. Other subparts deal specifically with—

(1) The requirement that the need for services be certified and that a physician establish a plan of treatment (Subpart B);

b. In § 424.5, the introductory language for paragraph (a) is republished and paragraph (a)(4) is revised to read as follows:

##### § 424.5 Basic conditions.

(a) As a basis for Medicare payment, the following conditions must be met:

(4) *Certification of need for services.*

When required, the provider must obtain certification and recertification of the need for the services in accordance with Subpart B of this part.

#### Subpart B—Physician Certification and Plan of Treatment Requirements

3. Subpart B is amended as follows:

a. The title for Subpart B is revised to read: Subpart B—Certification and Plan of Treatment Requirements.

b. Section 424.10(a), is revised to read as follows:

**§ 424.10 Purpose and scope.**

(a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs, and treatments, and determines the length of stay. Accordingly, sections 1814(a)(2) and 1835(a)(2) of the Act establish as a condition for Medicare payment that a physician certify the necessity of the services and, in some instances, recertify the continued need for those services.

Section 1814(a)(2) of the Act also permits nurse practitioners or clinical nurse specialists to certify and recertify the need for post-hospital extended care services.

c. In section 424.11, paragraph (b) is revised, the introductory language for paragraph (e) is revised, and a new paragraph (a)(4) is added to read as follows:

**§ 424.11 General procedures.**

(b) *Obtaining the certification and recertification statements.* No specific procedures or forms are required for certification and recertification statements. The provider may adopt any method that permits verification. The certification and recertification statements may be entered on forms, notes, or records that the appropriate individual signs, or on a special separate form. Except as provided in paragraph (d) of this section for delayed certifications, there must be a separate signed statement for each certification or recertification.

(e) *Limitation on authorization to sign statements.* A certification or recertification statement may be signed only by one of the following:

(4) A nurse practitioner or clinical nurse specialist, as defined and licensed by the State, in the circumstances specified in § 424.20(e).

d. In § 424.20, the introductory language and paragraph (a) are revised to read as follows:

**§ 424.20 Requirements for posthospital SNF care.**

Medicare Part A pays for posthospital SNF care furnished by a SNF or a hospital with a swing-bed approval only, if the certification and recertification for services are consistent with the content of paragraph (a) or (c) of this section, as appropriate.

(e) *Signature.* Certification and recertification statements may be signed by—

(1) The physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case; or

(2) A nurse practitioner or clinical nurse specialist, neither of whom has a direct or indirect employment relationship with the facility but who is working in collaboration with a physician. For purposes of this section, "collaboration" means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services are delivered within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in guidelines jointly developed between the practitioner and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 16, 1991.

Gail R. Wilensky,  
Administrator, Health Care Financing  
Administration.

Approved: April 4, 1991.

Louis W. Sullivan,  
Secretary.  
[FR: Doc. 91-15431 Filed 6-27-91; 8:45 am];  
BILLING CODE 4120-01-M.

**42 CFR Part 433**

[MB-35-P].

RIN: 0938-AE36

**Medicaid Program; Medicaid Management Information System (MMIS) Performance Review: Notification Procedures for Changes in Requirements, Performance Standards, and Reapproval Conditions**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to eliminate the requirement in the Medicaid regulations that HCFA meet certain Federal Register notification requirements for any changes in performance standards and other conditions for reapproval of State Medicaid Management Information Systems (MMISs), even if such Federal Register notice would not otherwise be required. An independent regulatory

Federal Register publication requirement would remain in place with respect to changes in system requirements and other conditions for approval of MMISs.

We believe that a revised process for notifying States and other concerned parties of changes in performance standards and other conditions of reapproval is appropriate and will facilitate the efficient issuance of revised MMIS review requirements and methodologies each year.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 29, 1991.

**ADDRESS:** Mail comments to the following:

Health Care Financing Administration,  
Department of Health and Human  
Services, Attention: MB-35-P, PO Box  
26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey  
Building, 200 Independence Avenue,  
SW., Washington, DC, or  
Room 132, East High Rise Building, 6325  
Security Boulevard, Baltimore,  
Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to:

Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, Room 3002, New Executive  
Office Building, Washington, DC  
20503, Attention: Allison Herron.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code MB-35-P. Comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

**FOR FURTHER INFORMATION CONTACT:**  
Rick Friedman, (301) 966-3292.

**SUPPLEMENTARY INFORMATION:****Background**

Under the authority of section 1903(a)(3) of the Social Security Act (the Act), HCFA requires most States with a Medicaid program to operate an approved mechanized claims processing and information retrieval system. The

mechanized claims processing and information retrieval system (referred to as the Medicaid Management Information System (MMIS) is a system of software and hardware used to process Medicaid claims, and to retrieve and produce utilization data and management information about Medicaid recipients and services. These data and information are required by the Medicaid agency and by the Federal Government for administrative and audit purposes.

Federal financial participation (FFP) is available at the 75 percent rate for operation of an approved MMIS. Section 1903(r)(4)(A) of the Act requires reviews of each MMIS at least once every 3 years to determine whether it meets performance standards, system requirements, and other conditions and continues to qualify for FFP. Other limited or full reviews also may be conducted. Sections 1903(r)(1)(C) and 1903(r)(4)(B) of the Act require reductions in FFP otherwise due a State under section 1903(a) if a State fails to meet certain deadlines for operating the system or if the system fails to meet certain conditions for approval or reapproval.

On June 30, 1981, we published in the *Federal Register* (46 FR 33653) a notice containing the initial performance standards used to evaluate State MMISs. In that notice, we indicated that the standards would be published in the *Federal Register* but the detailed supporting procedures concerning the application of the standards (sampling, scoring, evaluation methodologies, etc.) would be published in the State Medical Manual and issued to all MMIS States. We also provide the detailed instructions and supporting procedures, including the sampling, scoring, and evaluation methodologies that will be used to review each State's MMIS, as part of the System Performance Review (SPR) Guide issued to every State by June 30 of each year preceding the review period that begins October 1.

Section 1903(r)(6)(F) of the Act requires HCFA to periodically update the performance standards, systems requirements, review criteria, and other requirements, when appropriate, that are used in conducting reviews for reapproval of the MMIS. While the performance standards for reapproval of MMISs have remained mostly unchanged, the supporting procedures described earlier generally have been updated from year to year.

Although not required by statute, in July 1985 (50 FR 30848) we promulgated a regulation at § 433.123 which requires publication of a *Federal Register* notice describing proposed revisions to system

requirements, standards, or other conditions for approval or reapproval without regard to whether such *Federal Register* publication is required under the Administrative Procedure Act. In that regulation, we specified that we would issue a subsequent notice responding to public comments on any proposed revisions and issue the new or modified standards or conditions in the State Medicaid Manual. Section 433.123(b) specifies that HCFA will allow a reasonable period of time before the applicable review period for States to meet changes in systems requirements and conditions for approval. Section 433.123(c) specifies that HCFA will notify Medicaid agencies at least one calendar quarter before the applicable review period for new or modified standards or conditions of reapproval.

In accordance with § 433.123, we have published the standards in the *Federal Register*, but we have not published all of the factors, methods of evaluation, and supporting procedures. This is consistent with the intent specified in the June 30, 1981 *Federal Register* notice. As we indicated earlier, we issue, generally annually, the detailed factors, methods of evaluation, and supporting procedures for conducting MMIS reviews for reapprovals as part of the SPR Guide. (For informational purposes, we repeat the standards in the guide.)

#### State Involvement in Developing Updated Measures

Section 1903(r)(6)(E) of the Act requires us to notify all States of any revision in procedures, standards, and other requirements at least one quarter before they are to be used for conducting reviews for MMIS reapprovals. It does not mandate the form or the content of the notification. Since 1981, we have developed acceptable performance levels and specific methodologies for conducting reviews and evaluating State MMIS operations each fiscal year and issued them in the SPR Guide after consultation with and opportunity to comment by States through established HCFA administrative procedures. We have involved State representatives in this development, including the Systems Technical Advisory Group (S-TAG). The S-TAG is a component of the State Medicaid Directors Association (SMDA). The SMDA is an organization affiliated with the American Public Welfare Association (APWA). The existing S-TAG consists of seven State representatives and a representative from the APWA who provide technical assistance to HCFA on the systems operations of the Medicaid program,

especially the MMIS. HCFA holds meetings or teleconferences, or both, with the S-TAG to obtain their advice on proposed changes to the existing procedures and conditions of reapproval in the SPR Guide. In addition, HCFA frequently sends copies of the draft SPR Guide to the States and the S-TAG for further comment and input. This is done before the final distribution of the guide on or before June 30 preceding each fiscal year review period that begins on October 1. HCFA central office staff monitor this process and coordinate the changes from the States. As a result of this administrative process, the final SPR Guide that HCFA issues each year incorporates the States' input and addresses their concerns.

Based on our past experience, we believe that the opportunity offered to States by this administrative process to make recommendations and changes concerning the systems performance review requirements and to comment on specific proposals has proven to be an effective, efficient, and expeditious process in view of the frequency (at least once a year) with which we update and reissue the SPR Guide. We believe that this process of distributing the SPR Guide to all States by June 30 of each year preceding the review period that begins October 1 meets the requirements of section 1903(r)(6)(E) of the Act for notice of States.

#### Notice Changes

Since the inception of the MMIS program, HCFA has published in the *Federal Register* only one set of standards for reviewing the performance of the States' MMISs for reapprovals. In the June 30, 1981 notice cited earlier, standards and elements were specified; factors were included for illustrative purposes only. On September 5, 1990, we published in the *Federal Register* (55 FR 36319) a final notice to eliminate the use of elements in the SPR Guide. We further indicated that the factors would not be directly associated with any particular standard; that is, passing a given standard would not depend on meeting the requirements of a given grouping of factors. We made these changes because, based on our experience, the prior SPR Guide had a number of shortcomings. In some instances, specific activities we wanted to measure as indicative of the performance of the MMIS could not be logically classified under the standards or elements as they were formatted, or could arguably be placed under more than one of the standards and elements. In other instances, we felt it inappropriate to review activities under

a particular standard or element because shifting program emphasis indicated that priorities be placed in other areas.

On the basis of our experience in overseeing the administration of the MMIS and conducting the required performance reviews since 1981, we have concluded that the Federal Register notice requirements of § 433.123 concerning the performance standards and conditions of reapproval are constrictive, inflexible, and unnecessary. We have in place the previously discussed flexible and efficient procedures for making changes to the factors, methods of evaluation, and supporting materials, which provide ample notice to the States, allow for appropriate input by the States, and conform with provisions of the Act. Publication of revisions in the Federal Register generally requires a minimum lead time of 18 to 24 months. This lead time takes into account the approximate time for developing and clearing appropriate changes within HCFA and the Department, the process of publishing a proposed notice, a period of time for public comments, and issuance of a subsequent notice. As a result, we believe that the assessment data gathered from the reviews conducted under this lengthy publication process of changes would no longer be timely or relevant to current MMIS concerns.

We also believe that our notification process through issuance of the SPR Guide following consultation and cooperative development with the States and the S-TAG satisfy the requirement for appropriate notice in section 1903(r)(6)(E) of the Act. That requirement concerns the changes to the performance standards and other conditions used for the reapproval of State MMISs.

As indicated earlier, we obtain States' input and respond to their comments. In addition, the advance release time of the SPR Guide at least one quarter before the date that it will be used for reapproval reviews meets the notification period required in the Act. As also discussed earlier, all of the standards, factors, methods of evaluation, and scoring and sampling methodologies are included in the guide and issued to States 3 months before the affected review period (by June 30 before the October 1 implementation date). Therefore, we have concluded that publication of a notice of proposed changes, a final notice addressing public comments in the Federal Register, and a subsequent administrative issuance as a prerequisite for issuing final changes in the conditions for reapproval is not the

most appropriate, efficient mechanism for notifying MMIS States of proposed changes and allowing them opportunity for comment. We will use a more expeditious means of providing States with notice of changes and opportunity for comment through the SPR Guide.

We are proposing to delete those provisions of § 433.123 which specify that notification of changes concerning performance standards and/or other conditions of reapproval must take place through publication of a proposed notice, a subsequent notice addressing public comments in the Federal Register, and publication in the State Medicaid Manual. In place of that language, we are proposing to revise § 433.123 to reflect the notice requirements in section 1903(r)(6)(E) of the Act; that is, we will notify Medicaid agencies directly at least one calendar quarter before the review period to which the new or modified performance standards or conditions of reapproval apply. As a result, HCFA will be able to develop or modify more effective reapproval requirements. HCFA also will be able to conduct system performance reviews of MMISs under a performance review mechanism that is more timely, easier to work with, and more reflective of the current concerns in MMIS State operations with more relevant and timely assessment data being derived from the reviews as well.

#### Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble and will respond to the comments in the preamble of the final rule issued following this proposed rule.

#### Paperwork Burden

Section 433.123 does not contain information collection requirements that are subject to review by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

#### Regulatory Impact Statement

##### 1. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

This proposed rule would delete the requirements from § 433.123 of the regulations that we publish the performance standards and other conditions for reapproval of MMISs in the Federal Register. These requirements are not dictated by statute and are considered unnecessary at this time. Under current requirements of the regulations, flexibility and efficiency for making changes are greatly limited. For example, publication and final change in the Federal Register in accordance with § 433.123 ordinarily requires a minimum lead time of 18 to 24 months.

The objective of this proposed rule is to increase efficiency in implementing needed changes in MMIS operations and administration by eliminating the need for publication in the Federal Register as a prerequisite for our making changes to the SPR Guide. States would continue to receive notice and an opportunity to comment. Therefore, any effect on States due to this proposed regulation would be minimal.

We do not expect this proposed rule to meet any of the criteria for a major rule under E.O. 12291. Therefore, we are not including an initial regulatory impact analysis.

##### 2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider States to be small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a proposed regulation may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan

Statistical Area and has fewer than 50 beds.

Since States are not considered small entities, we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of small entities. As discussed above, States would still be given notice and an opportunity to comment on proposed changes. In addition, this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared analyses for either the RFA or section 1102(b) of the Act.

#### List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR part 433 would be amended as follows:

#### PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

**Authority:** Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.123 is revised to read as follows:

#### § 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever HCFA modifies system requirements or other conditions for approval under § 433.112 or § 433.116, HCFA will—

(1) Publish a notice in the *Federal Register* making available the proposed changes for public comment;

(2) Respond in a subsequent *Federal Register* notice to comments received; and

(3) Issue the new or modified requirements or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) Whenever HCFA modifies performance standards and other conditions for reapproval under

§ 433.119, HCFA will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Programs)

Dated: November 12, 1990.

Gail R. Wilensky,  
Administrator, Health Care Financing Administration.

Approved: March 27, 1991.

Louis W. Sullivan,  
Secretary.

[FR Doc. 91-15432 Filed 6-27-91; 8:45 am]

BILLING CODE 4120-01-M

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 91-177, RM-7737]

#### Radio Broadcasting Services; Orland, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Edward E. Abramson, permittee of Station KXHM(FM), Channel 293A, Orland, California, seeking the substitution of FM Channel 294B1 for Channel 293A and modification of his construction permit accordingly. Coordinates for this proposal are 39-45-40 and 122-22-20.

Petitioner's modification proposal complies with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 294B1 at Orland, California, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

**DATES:** Comments must be filed on or before August 16, 1991, and reply comments on or before September 3, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Eric S. Kravetz, Esq., Brown, Finn & Nietert, 1920 N. Street, NW., suite 660, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-177, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-15504 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[Docket No. 91-176, RM-7738]

#### Radio Broadcasting Services; Fortuna and Rohnerville, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by North Star Communications, permittee of Station KQEX(FM), Channel 263A, Rohnerville, California, seeking to change the designation of its community of license to specify Fortuna, and to modify its permit for Station KQEX(FM) to specify operation on Channel 262C2. Petitioner's proposal is premised on a desire to provide a first local, wide area coverage FM transmission service to Fortuna, the community to which Rohnerville is annexed. Coordinates for this proposal are the presently authorized site for

Station KQEX(FM) at 40-30-03 and 124-17-10.

Petitioner's modification proposal is considered pursuant to the provisions of § 1.420 (g) and (i) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 262C2 at Fortuna, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

**DATES:** Comments must be filed on or before August 16, 1991, and reply comments on or before September 3, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: North Star Communications, Radio Station KQEX(FM), P.O. Box 291, Fortuna, CA 95540.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-176, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-15503 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 91-178, RM-7141]

#### Radio Broadcasting Services; Miami Beach, Florida

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Gilmore Broadcasting Corporation, licensee of Station WLVE(FM), Channel 230C1, Miami Beach, Florida proposing the substitution of Channel 230C for Channel 230C1 at Miami Beach, Florida, and modification of its license to specify the higher class co-channel. Channel 230C can be allotted to Miami Beach in compliance with the Commission's minimum distance separation requirements without a site restriction at coordinates North Latitude 25-47-18 and West Longitude 80-07-48. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

**DATES:** Comments must be filed on or before August 16, 1991, and reply comments on or before September 3, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John C. Quale, Edward A. Yorkgitis, Jr., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Attorneys for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-178, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-15505 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

**Notices**

Federal Register

Vol. 56, No. 125

Friday, June 28, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Stabilization and Conservation Service**

**1991-1992 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas**

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Notice of determination.

**SUMMARY:** This notice sets forth the determination of the 1991-1992 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sarah J. Matthews, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447-4318.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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

**Discussion**

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, except Puerto Rico (type 46) Tobacco, The Agricultural Statistics Board, National Agricultural Statistical Service (NASS), U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

The National Marketing Quota for Puerto Rican (type-46) Tobacco for the immediately preceding marketing year was "0" pounds. There is no record of any such tobacco being marketed. Consequently, the penalty rate for the 1991-1992 marketing year cannot be determined based on seventy-five (75) percent of the average market price for the immediately preceding year. Therefore, the penalty rate for Puerto Rican (type-46) Tobacco for the 1991-1992 marketing year shall be the same as the penalty rate determined for the 1989-1990 marketing year, the last year in which marketing information is available.

Since the determination of the 1991-1992 marketing year rates of penalty reflect only mathematical computations which are required to be made in

accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined the 1991-1992 marketing year rates of penalty of kinds of tobacco subject to marketing quotas are as follows:

**RATE OF PENALTY**  
(1991-1992 Marketing Year)

Kinds of tobacco	Cent per pound
Flue-Cured.....	125
Burley.....	131
Fired-Cured (Type 21).....	120
Fired-Cured (Types 22, and 23).....	146
Dark Air-Cured (Types 35, and 36).....	140
Virginia Sun-Cured (Type 37).....	109
Cigar-Filler and Binder (Types 42, 43, 44, 54, and 55).....	113
Puerto Rican Cigar Filler (Type 46).....	57

Signed at Washington, DC on June 24, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-15450 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-05-M

**Food Safety and Inspection Service**

[Docket No. 91-024N]

**National Advisory Committee on Microbiological Criteria for Foods; Meeting**

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods, will be held on Tuesday and Wednesday, July 16-17, 1991, in Denver, Colorado, from 8:30 a.m. to 4:30 p.m., at the Doubletree Hotel, 13696 East Iliff Place at I-225, (Aurora, Colorado) 80014, telephone (303) 337-2800.

In addition, this notice announces that the Seafood Working Group of the Advisory Committee on Microbiological Criteria for Foods will hold a working group meeting on July 15, 1991, from 1 p.m. to 4 p.m., also being held at the Doubletree Hotel, Denver, (Aurora) Colorado.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can

be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The following topics are scheduled for discussion:

(1) Presentation on *Campylobacter* by Dr. Morris Potter, Centers for Disease Control, Atlanta, Georgia.

(2) *Listeria monocytogenes* document as prepared and presented by the *Listeria monocytogenes* Working Group.

(3) Read Meat and Poultry Hazard Analysis and Critical Control Points Plans as prepared and presented by the Meat and Poultry Working Group.

(4) Microbiological Safety of Raw Molluscan Shellfish as prepared and presented by the Seafood Working Group.

This notice also announces the appointment to the committee of Dr. Sterling S. Thompson of Hershey Foods Corporation, Hershey, Pennsylvania, and the reappointment for 1 year of Dr. Mitchell Cohen, Centers for Disease Control, Atlanta, Georgia.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. When submitting comments, please reference Docket Number 91-024N. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC, on: June 24, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-15452 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-DM-M

#### Forest Service

#### Copper Basin Land Exchange and Mine Plan Proposal; Prescott National Forest and Phoenix District (BLM) Yavapai County, AZ; Environmental Impact Statement Cancellation Notice

Phelps Dodge Corporation of Phoenix, Arizona, has withdrawn its proposals for a land exchange and mining in the Copper Basin area of Yavapai County, Arizona.

The Notices of Intent, published in the *Federal Register* of August 4, 1988, and as revised in the *Federal Register* of January 19, 1989, are thereby rescinded:

(FR Documents are, respectively, 88-17561 and 89-1213).

#### FOR FURTHER INFORMATION CONTACT:

Ray Thompson, Copper Basin Interdisciplinary Team Leader, Prescott National Forest, 344 S. Cortez St., Prescott, AZ 86303; telephone (602) 445-1762 or FTS 762-4820.

Dated: June 20, 1991.

Coy G. Jemmett,

Forest Supervisor.

[FR Doc. 91-15371 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### MCTL Implementation Technical Advisory Committee; Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 25, 1991, at 9:30 a.m., in the Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the notice of determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: June 24, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91-15420 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

[A-428-801, A-427-801, A-475-801, A-588-804, A-485-801, A-559-801, A-401-801, A-549-801, A-412-801]

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Initiation of Antidumping Administrative Reviews

**AGENCY:** Import Administration/International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of antidumping duty orders concerning Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. In accordance with the Commerce Regulations, we are initiating those administrative reviews for the period May 1, 1990, through April 30, 1991.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Roland L. MacDonald, Director, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2104.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Commerce ("the Department") has received timely requests, in accordance with section 353(a), (2), and (3) of the Department's regulations, for administrative reviews of antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof. The orders cover three classes or kinds of merchandise: ball bearings, cylindrical roller bearings (cylindrical), and spherical plain bearings (spherical).

##### Initiation of Reviews

In accordance with § 353.22(c) of the Department's regulations, we are

initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews no later than May 31, 1992.

Antidumping duty proceedings and firms	Class or kind
<i>Federal Republic of Germany</i>	
A-428-801:	
Aerospatiale Division Helicopteres.	All.
Durbal GmbH & Co.	Ball & Spherical.
FAG Kugelfischer George Schaefer KGaA.	All.
FiatAvio S.p.A.	Ball & Cylindrical.
Fichtel & Sachs AG.	Ball
Georg Meuller Nurnberg, AG. (GMN).	All.
Heidelberg Druckmaschinen, AG..	All.
INA Walzlager Schaeffler KG..	All.
Messerschmitt-Boelkow-Blohm GmbH. (MBB).	All.
Neueg Fertigung GmbH. (NWG).	Ball.
NTN Kugelfaerfabrik (Deutschland) GmbH..	All.
Pratt & Whitney Canada, Inc..	Ball & Cylindrical.
Rieter Machine Works, Ltd. (located in the United Kingdom).	All.
Rieter-Scragg Ltd. (located in Switzerland).	All.
Schubert & Salzer Maschinenfabrik AG..	All.
SKF GmbH. (including all relevant affiliates).	All.
Zahnradfabrik Friedrichshafen AG..	All.
<i>France</i>	
A-427-801:	
Aerospatiale Division Helicopteres.	All.
Dassault Industries (including all relevant affiliates).	All.
FiatAvio S.p.A.	Ball & Cylindrical.
INA Roulements S.A.	All.
Messerschmitt-Boelkow-Blohm (MBB).	All.
Messier Bugatti.	All.
Pratt & Whitney Canada, Inc..	Ball & Cylindrical.
Rieter Machine Works, Ltd....	All.
Rieter-Scragg Ltd.	All.
Schubert & Salzer Maschinenfabrik AG..	All.
SKF France (including all relevant affiliates).	All.
SNFA.	Ball & Cylindrical.
SNR Roulements S.A.	Ball & Cylindrical.
Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA).	Ball & Cylindrical.
Turbomeca.	All.
<i>Italy</i>	
A-475-801:	
Aerospatiale Division Helicopteres.	Ball & Cylindrical.
FAG Italy.	Ball & Cylindrical.
FiatAvio S.p.A.	Ball & Cylindrical.
Messerschmitt-Boelkow-Blohm, GmbH. (MBB).	Ball & Cylindrical.
Meter, S.p.A.	Ball & Cylindrical.
SKF-Industrie S.p.A. (including all relevant affiliates).	Ball & Cylindrical.
Rieter Machine Works, Ltd....	Ball.

Antidumping duty proceedings and firms	Class or kind
Fierter-Scragg Ltd.	Ball.
Rolls Royce	Ball & Cylindrical.
Schubert & Salzer Maschinenfabrik AG..	Ball.
Societe Nationale d'Etude et de Constructin de Moteurs d'Aviation (SNECMA).	Ball & Cylindrical.
<i>Japan</i>	
A-588-804:	
Asahi Seiko Co., Ltd.	Ball.
C. Itoh and Co.	Ball & Cylindrical.
FiatAvio S.p.A.	Ball & Cylindrical.
Fujino Iron Works Co., Ltd.	Ball.
HIC Corporation	Ball.
Honda Motor Co., Ltd.	All.
Inoue Jikuuke Kogyo Co., Ltd..	Ball & Cylindrical.
Izumoto Seiko Co., Ltd.	Ball.
Koyo Seiko Company, Ltd.	All.
Kurce Industries Co.	Spherical.
Maehara Ironworks Co., Ltd.	Spherical.
Mazda Motor Corp.	Ball & Cylindrical.
Messerschmitt-Boelkow-Blohm, GmbH. (MBB).	All.
Minebea Co., Ltd.	All.
Nachi-Fujikoshi Corporation	Ball & Cylindrical.
Nakai Bearing Co., Ltd.	Ball.
Nankai Seiko Co., Ltd.	Ball.
Nippon Pillow Block Sales Company, Ltd..	All.
Nippon Seiko K.K.	All.
NTN Corp.	All.
Osaka Pump Co., Ltd.	Ball.
Peer International Japan	Ball.
Rieter Machine Works, Ltd.	All.
Rieter-Scragg Ltd.	All.
Schubert & Salzer Maschinenfabrik AG..	All.
Showa Pillow Block Mfg., Ltd.	Ball.
Sumitomo Corp.	Ball & Cylindrical.
Takeshita Seiko Co.	Ball.
Tottori Yamakai Bearing Seisakusho Ltd..	Ball.
Uchiyama Manufacturing Corp..	Ball.
Wada Seiko Company, Ltd.	Ball.
Yamaha Motor Company.	All.
<i>Romania</i>	
A-485-801:	
Tehnoimportexport	Ball.
<i>Singapore</i>	
A-559-801:	
NMB Singapore/Pelmec Ind.	Ball.
<i>Sweden</i>	
A-401-801:	
Rieter Machine Works, Ltd.	Ball.
Rieter-Scragg Ltd.	Ball.
Schubert & Salzer Maschinenfabrik AG..	Ball.
SKF Sverige (including all relevant affiliates).	Ball & Cylindrical.
<i>Thailand</i>	
A-549-801:	
NMB Thai/Pelmec Thai Ltd.	Ball.
Rieter Machine Works, Ltd.	Ball.
Rieter-Scragg Ltd.	Ball.
Schubert & Salzer Maschinenfabrik AG..	Ball.
<i>United Kingdom</i>	
A-412-801:	
Aerospatiale Division Helicopteres.	Ball & Cylindrical.

Antidumping duty proceedings and firms	Class or kind
Barden Corporation	Ball & Cylindrical.
Cooper Bearings Ltd.	Cylindrical.
FAG UK	Ball & Cylindrical.
FiatAvio S.p.A.	Ball & Cylindrical.
INA Bearing Co., Ltd.	Ball & Cylindrical.
Pratt & Whitney Canada, Inc..	Ball & Cylindrical.
Rieter Machine Works, Ltd.	Ball.
Rieter-Scragg Ltd.	Ball.
RHP Bearings Ltd.	Ball & Cylindrical.
Rolls Royce	Ball & Cylindrical.
Schubert & Salzer Maschinenfabrik AG..	Ball.
SKF (UK) Ltd. (including all relevant affiliates).	Ball & Cylindrical.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989).

Dated: June 21, 1991.  
**Joseph A. Spetrini,**  
*Deputy Assistant Secretary for Compliance.*  
 [FR Doc. 91-15484 Filed 6-27-91; 8:45 am]  
**BILLING CODE 3510-DS-M**

**[A-401-601]**

**Brass Sheet and Strip From Sweden; preliminary results of antidumping duty administrative reviews**

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests by the respondent, Outokumpu Copper Rolled Products AB (OAB) (formerly Metallverken AB), the Department of Commerce has conducted two administrative reviews of the antidumping duty order on brass sheet and strip from Sweden. The reviews cover one exporter and two consecutive periods from March 1, 1988 through February 28, 1990.

As a result of the reviews, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Freilich or Linda L. Pasden,

Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 6, 1987, the Department of Commerce ("the Department") published in the *Federal Register* an antidumping duty order on brass sheet and strip from Sweden (52 FR 6998). On March 1, 1989 and March 30, 1990, respectively, OAB requested that we conduct administrative reviews for the two periods from March 1, 1988 through February 28, 1990. We published notices of initiation of the antidumping administrative reviews on April 28, 1989 (54 FR 18320) and April 27, 1990 (55 FR 17792). The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

##### Scope of the Review

The products covered by this review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Sweden. The chemical composition of the products under investigation is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation. Until January 1, 1989, such merchandise was classifiable in the Tariff Schedules of the United States Annotated ("TSUSA") under item numbers 612.3960, 621.3982, and 621.3986. Since that date, the merchandise has been classifiable under the Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.20. The TSUSA and HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover one manufacturer/exporter, OAB, and the two annual periods from March 1, 1988 through February 28, 1990.

##### United States Price

In calculating the United States price, the Department used purchase price and exporter's sales price as defined in section 772 of the Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales made through a related sales agent in the United States to an unrelated purchaser

prior to the date of importation, we also used purchase price as a basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (2) this was a customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. Final Determination of Sales at Less Than Fair Value: Color Picture Tubes From Japan, 52 FR 44171 (1987).

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. *Id.* Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves. *Id.* Where the merchandise was further processed in the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. The calculation of United States price is detailed below.

Purchase price was based on the delivered price to unrelated purchasers prior to importation into the United States. For purchase price, where applicable, we made deductions for U.S. customs duty, U.S. brokerage and handling, ocean freight and insurance. For exporter's sales price sales, where applicable, we made deductions for credit, U.S. customs duty, ocean freight and insurance, warranty, U.S. brokerage and handling, early payment discounts, U.S. inland freight, value added for further processing, commissions, and indirect selling expenses.

For the one U.S. customer for which we had information that OAB's U.S. subsidiary paid some of the freight costs from independent U.S. warehouses to the customer, but for which we had received no information on these freight costs, we used the reported ocean freight expenses as best information available (BIA). Because the respondent did not report exact commission rates for closed consignment sales, we used the highest rate in the respective period as BIA. For the sales that OAB's U.S. subsidiary further processed, where the shipping date from the subsidiary was

not reported, we used the shipping date from Sweden as BIA. For ESP transactions, where indirect selling expenses were not reported, we used the rate reported for the commissions as BIA. When sales dates preceded the review period, we used the commission rate of the first year of the period as BIA.

##### Foreign Market Value

In calculating the foreign market value (FMV), the Department used home market price as defined in section 773(a) of the Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. Home market price was based on the delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight and insurance, and for differences in indirect selling expenses, credit, warranty, and packing, as well as for post-sale warehousing expenses incurred in the United States.

Since there were no commissions paid in the home market during the March 1, 1988 through February 28, 1989 period, for purchase price transactions, we deducted home-market indirect selling expenses from FMV to offset U.S. commissions. See 19 CFR 353.56(b)(1).

No indirect selling expenses were provided for the period March 1, 1989 through February 28, 1990 for both purchase price and exporter sale's price transactions. For purchase price transactions, we added the U.S. commissions to FMV and did not offset FMV for these indirect expenses. See 19 CFR 353.56(b)(1); 353.56(b)(2).

Because respondent did not report home market sales in 1987, we matched U.S. sales in 1987 to home market sales in January 1988. Because there were no sales of 1063 strip in the home market during one period, we matched U.S. sales of 1063 strip to home market sales of 1070 strip. We did not make adjustments for physical differences because no adjustment data were provided.

##### Preliminary Results of the Review

As a result of our comparison of United States Price to foreign market value, we have preliminarily determined that the following margins exist for OAB:

Period of review	Margin (percent)
3/1/88-2/28/89	4.36
3/1/89-2/28/90	13.76

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all entries of the subject merchandise covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) if the exporter is not a firm covered by this review or by the initial investigation, but the manufacturer is covered by this review or the investigation, then the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review; and (3) the cash deposit rate for all other exporters/producers shall be 13.76 percent. These deposit requirements, when imposed, 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 § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: June 24, 1991.

Eric I. Garfinkel,  
Assistant Secretary for Import  
Administration.  
[FR Doc. 91-15485 Filed 6-27-91; 8:45 am]  
BILLING CODE 3510-DS-M

[A-201-601]

### Notice of Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Mexico

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson, Steve Alley, or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8830, (202) 377-1766, or (202) 377-1776, respectively.

#### Final Results

##### Background

On May 2, 1991, the Department published in the *Federal Register* the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico (56 FR 20189). On May 9, 1991, the Floral Trade Council, the petitioner, requested a public hearing in this case. On May 10, 1991, respondents Rancho Mision el Descanso (Rancho Mision), Florex, Tzitzic Tareta (Tzitzic), and Visaflor also requested a hearing. On May 10, 1991, respondents Rancho el Aguaje and Rancho el Toro indicated that they would participate in the hearing.

Case briefs were filed by petitioner and all respondents on May 24, 1991. Rebuttal briefs were filed by petitioner and all respondents on May 31, 1991. A public hearing was held on May 31, 1991.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

##### Scope of Review

The products covered by this review are standard carnations, standard chrysanthemums, and pompom chrysanthemums. Such merchandise is currently classified under item numbers 0603.10.7010 (pompom chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations) of the Harmonized Tariff Schedule (HTS). Although the HTS item numbers are

provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

##### Best Information Available

Pursuant to section 776(c) of the Act, the Department is required to use best information available (BIA) whenever a party to the proceeding refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceeding. In accordance with this section, we determined in our preliminary results that the use of BIA was appropriate for three of the six respondents: Rancho Mision, Tzitzic, and Visaflor. These respondents have argued that it is inappropriate to use BIA for the final results. However, we have determined that the use of BIA continues to be appropriate for these companies. See Comment 2 in the "Interested Party Comments" section of this notice for further discussion.

Petitioner has argued that it is appropriate to also use BIA for two other respondents: Rancho el Aguaje and Rancho el Toro. However, these respondents were able to produce information requested in a timely manner and in the form required, and they did not significantly impede the proceeding. Therefore, we have used the information submitted by these respondents in these final results. See Comment 1 in the "Interested Party Comments" section of this notice for further discussion.

##### United States Price

As in the original fair value investigation and in all prior administrative reviews, all U.S. prices were weight-averaged on a monthly basis in order to account for the perishability of the product. For the preliminary results, we weight-averaged U.S. prices by grade of flower. However, for purposes of the final results, we have calculated weighted-average monthly U.S. prices by type of flower, without regard to specific grades. See Comment 9 in the "Interested Party Comments" section of this notice.

##### Florex

We based U.S. price on both purchase price and exporter's sales price (ESP) because sales were made to unrelated purchasers both before and subsequent to importation. The sales made subsequent to importation were made through an unrelated consignment agent in the United States. When sales were made to an unrelated purchaser prior to importation and ESP methodology was not indicated by other circumstances,

we calculated purchase price for Florex based on packed, f.o.b. Mexico City airport prices and f.o.b. farm prices. Specific adjustments to the amounts reported are fully discussed in the Preliminary Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico; 56 FR 20191 (May 2, 1991) (Preliminary Results).

Where sales were made subsequent to importation, we calculated ESP based on f.o.b. Houston airport prices. Specific adjustments to the amounts reported as well as deductions to ESP are fully discussed in the Preliminary Results.

#### *Rancho el Aguaje*

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through unrelated consignment agents in the United States.

To calculate ESP, we used the packed, f.o.b. prices delivered to the consignment agent's offices in the United States. Specific adjustments to the amounts reported as well as deductions to ESP are fully discussed in the Preliminary Results.

#### *Rancho el Toro*

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through an unrelated consignment agent in the United States.

To calculate ESP, we used the packed, ex-warehouse prices at the consignment agent's warehouse in the United States. Specific adjustments to the amounts reported as well as deductions to ESP are fully discussed in the Preliminary Results.

#### *Foreign Market Value*

Foreign market value (FMV) was calculated based on constructed value (CV) for Florex, Rancho el Aguaje and Rancho el Toro.

#### *Florex*

We found that more than 90 percent of Florex's sales of pompom chrysanthemums in Mexico were made at prices below the cost of production (COP). Accordingly, we disregarded all sales as the basis for determining FMV. In accordance with section 773(b) of the Act, we calculated FMV based on constructed value (CV). See the Preliminary Results for the calculation of COP and CV for Florex and an

explanation of the deductions from CV and all circumstance of sale adjustments.

#### *Rancho el Aguaje*

Rancho el Aguaje did not have home market or third country market sales of export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(a)(2) of the Act. See the Preliminary Results for the calculation of CV and an explanation of the deductions from CV.

#### *Rancho el Toro*

Rancho el Toro did not have home market or third country market sales of export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(a)(2) of the Act. See the Preliminary Results for the calculation of CV and an explanation of the deductions from CV.

#### *Analysis of Comments Received*

We invited interested parties to comment on the preliminary results of this administrative review. We received case and rebuttal briefs from the petitioner and all respondents.

#### *Comment 1*

Petitioner contends that the final determination for Rancho el Aguaje and Rancho el Toro should be based on BIA. Petitioner argues that verification of the submissions of both companies established that these submissions were replete with inaccuracies and that substantial sales and cost data were not reported. In addition, petitioner contends that the fact that flowers grown by Rancho el Toro and the consignment agent's own ranch are routinely mingled by the consignment agent and that the Department found at verification that Rancho el Toro reported sales of flowers produced by a third grower, affect the reliability of the average U.S. price calculated by the Department. Finally, petitioner argues that the Department was unable to verify respondents' cost responses due to the lack of basic internal controls (e.g., audited financial statements, bank accounts, etc.) in respondents' accounting systems.

Rancho el Aguaje and Rancho el Toro contend that the Department acted correctly and within its discretion in relying upon their responses for purposes of the preliminary results and that it should continue to do so for the final results. These respondents state that verification of the responses was exhaustive and that the verification reports show that their responses were, with the exception of the few errors found during verification, complete and

accurate. These respondents further asserted that the magnitude of the errors discovered at verification was so small as to be virtually insignificant. Regarding the sales of the subject merchandise produced by the consignment agent's own ranch reportedly "found" at verification, Rancho el Toro notes that it informed the Department of its inability to segregate individual sales at the time that the questionnaire was issued and that the Department instructed it to report these "commingled" sales. Finally, both respondents claim that their accounting systems fully capture all costs and that the Department did not find at verification that either grower had omitted any costs that were traditionally associated with flower cultivation.

#### *DOC Position*

We agree with respondents. Section 776(c) requires the Department to use BIA whenever a party to the proceeding refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceeding. The administrative record in this case demonstrates that both of these respondents have provided all information requested in a timely manner and have cooperated fully with the Department. In addition, verification of respondents' data established that the vast majority of their submissions to the Department was complete and accurate and that, in those instances where data was found to be inaccurate, the errors were generally clerical in nature and easily corrected.

Regarding petitioner's assertion that Rancho el Toro's price data is unreliable because the Department found at verification that Rancho el Toro reported sales of flowers produced by the consignment agent's own ranch, we note that Rancho el Toro informed the Department, prior to submission of its questionnaire response, that its consignment agent was unable to segregate sales of flowers produced by its own ranch and that of the respondent. At that time, we allowed Rancho el Toro to submit data on all of the sales made by the consignment agent. Standard carnations are a fungible commodity, and there is no price difference between flowers produced by different growers. Therefore, because the product is fungible with no price differences, we have determined that calculating an average price using the "commingled" sales data does not skew the results. With regard to the third grower

discovered at verification, we saw no evidence that this additional grower produced subject merchandise. Therefore, any argument that it is improper to include sales of this specific grower in our analysis is moot because the sales were not reported nor included in the average U.S. price.

Finally, we have considered petitioner's allegation that the Department was unable to verify the cost response due to the lack of basic internal controls in these respondents' accounting systems. As we noted in our preliminary results, we are accepting the data reported by these companies because: (1) Under Mexican law, these companies, as agricultural producers, were not required to maintain their records in a more formal manner; (2) these companies did maintain at least an internal record system which supported the questionnaire responses; and (3) at verification we found no evidence of systematic underreporting of costs.

Based on the foregoing, we have determined that it is inappropriate to reject these respondents' responses. Accordingly, we have based our final results on the data submitted by these respondents.

#### *Comment 2*

Petitioner contends that BIA for Visaflor and Tzitzic should be based on the margin received by Florex. Petitioner notes that given their failure to cooperate, the ITA would normally assign to these respondents the rate calculated for Florex. Petitioner contends that the Department inappropriately departed from its standard practice because the margin was too high. Petitioner submits that the fact that Florex's margin is high should not preclude the Department from assigning this margin to uncooperative respondents. To do otherwise, petitioner claims, would reward uncooperative respondents by placing them on equal footing with cooperative respondents and would provide no incentive for these respondents ever to cooperate with the Department if their data reflects dumping at a greater level than the level of the margins established for them in previous reviews or the original investigation.

Visaflor states that the Department is not required to use data that is least favorable to uncooperative respondents. Visaflor argues that in light of all the facts, the Department's decision to use, as BIA for Visaflor, the highest margin previously calculated for Visaflor is appropriate because it is based on the company's own prior rate. Visaflor believes that Florex's rate is an

aberration, not representative of the market, and should not be used for Visaflor or any other company.

#### *DOC Position*

We agree with respondent. The Department's regulations state that "if an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is best information available" (19 CFR 353.37(b)). In this case, given the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation, and Florex's extraordinarily high business expenses during this review period resulting from investment activities which are uncharacteristic of other companies subject to this review, we find it inappropriate to use Florex's rate as BIA.

#### *Comment 3*

Petitioner maintains that the Department should continue to use the "all other" rate established in the original investigation as the rate that applies to producers or exporters that have not been assigned a company specific rate as a result of participation in either the original investigation or one of the administrative reviews. Petitioner notes that the "ITA normally establishes, on the basis of the results obtained in the current review, estimated duty deposits for future entries of the merchandise by producers included in the review and new producers/exporters that are unrelated to the reviewed firms and who commence shipments after the publication of final results ('new shipper rate')."

#### *DOC Position*

The Department has changed its practice with respect to the "new shipper/all other" rate because of difficulties Customs has in determining when a producer/exporter begins shipping the subject merchandise to the United States. See Antifriction Bearings, (Other than Tapered Roller Bearings) and Parts Thereof from France, Italy, Japan, Romania, Singapore, Sweden, Thailand, the United Kingdom and West Germany; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews; 56 FR 11178-11204 (March 15, 1991). In the future, all shippers not having an individual rate in any administrative review or the original investigation, and who are not

related to any firms with individual rates, regardless of when they begin exporting, will be assigned the "all other" rate, which is the highest rate calculated for any reviewed firm. (Note that this rate was formerly called the "new shipper" rate. The Department will no longer calculate a separate "new shipper" rate, but will update the "all other" rate with each administrative review.)

#### *Comment 4*

Florex maintains that interest expenses relating to its now defunct joint venture should not be included in the COP for the subject merchandise because they allegedly relate to a separate line of business. Citing to several cases, Florex argues that the Department has consistently determined that expenses from other lines of business or from the production of non-subject merchandise should not be included in the calculation of COP. Florex notes that its interest expense relates to investments concerning flowers not subject to this administrative review which were grown under significantly different conditions than the flowers under review. By including these expenses in the COP, Florex argues that both COP and the resulting CV are overstated.

Petitioner acknowledges the exception to the Department's past practice of including all interest expenses in selling, general and administrative (SG&A) expenses when it is established that the interest expenses incurred were not related to the merchandise under review. However, petitioner notes that the Department's determination that the interest expenses were related to the merchandise under review was reasonable given that the investment activities involved the production of flowers in Mexico. Petitioner also states that it is the Department's longstanding practice to accept a respondent's normal accounting practice except where to do so would distort the results. Because Florex's balance sheet listed the investment expenses as an asset being amortized, petitioner contends that the burden is on the respondent to demonstrate that the expenses were not properly carried in its own books and that Florex failed to do so. Lastly, petitioner asserts that the Department verified that the investments were related to the flowers under review.

#### *DOC Position*

We agree with petitioner. We consider interest expense to be a general expense relating to overall company operations. Accordingly, we

include all general expenses in our COP calculation and allocate these general expenses to all products of the company based on total company cost of sales. Florex confuses the Department's practice relating to the calculation of manufacturing costs (which include only costs associated with the subject merchandise) with its practice relating to its calculation of general expenses which, by definition, relate to both subject and non-subject merchandise.

While the Department agrees that in the past it has excluded certain manufacturing costs which relate to other lines of business, Florex's interest expense is a general expense and does not relate to a separate line of business.

#### *Comment 5*

Florex maintains that shipping and other movement expenses for flowers that could not be sold should be allocated over all flowers sold during the POR and should not be allocated only over the flowers in the same shipment that were sold. Florex claims that it experienced abnormal spoilage rates during the period of review. Respondent believes that abnormal spoilage is a period cost, rather than a product cost, and, as such, should be allocated over all sales in the period.

Petitioner argues that the fact that Florex experienced spoiled flowers in several of its shipments conflicts with Florex's claim that these losses were abnormal. Given the perishable nature of flowers, spoilage in several shipments is not an unexpected event and certainly is not abnormal. Petitioner also notes that Florex's claim that its losses were abnormal is not supported by evidence and that, absent evidence showing spoilage rates in the industry, there is no way of knowing whether Florex's losses were abnormal.

#### *DOC Position*

We agree with petitioner. Florex never claimed prior to the pre-hearing brief that it experienced abnormal spoilage nor provided evidence supporting such a claim. Absent such evidence, the Department cannot determine whether Florex experienced abnormal spoilage.

#### *Comment 6*

Tzitzic claims that the Department was unjustified in initiating a COP investigation and in requiring it to respond to Section D of the questionnaire. Respondent argues that petitioner made no allegation of sales below cost in this review, and that petitioner's allegation of sales below cost in the 1988-1989 review was largely unsupported by the facts insofar as all

home market sales except for standard carnations were used as the basis for FMV. Accordingly, there was no justification for the Department's decision to issue to Tzitzic a COP questionnaire, or subsequently, the Department's decision to use BIA when Tzitzic failed to answer the COP questionnaire. Moreover, Tzitzic argues that, similar to the Department decision concerning Rancho Mision, the Department should have used BIA for only standard carnations, substantial sales of which were found to have been made below cost in the 1988-1989 review, and that the Department should have verified and considered data submitted by Tzitzic for the other flower types.

Petitioner contends that because the Department determined in the previous (1988-1989) review that Tzitzic had home market sales below the cost of production, it was reasonable to initiate a sales-below-cost investigation, and that it is the Department's policy to investigate below-cost sales whenever a prior review revealed significant below-cost sales with respect to the same producer. Petitioner also notes that the statute requires the Department to use BIA whenever a respondent refuses or is unable to provide requested data. Given that Tzitzic was asked to respond to Section D several times, and never did so, petitioner contends that the Department was justified in cancelling verification and using BIA.

#### *DOC Position*

We agree with petitioner. It is the Department's standard practice to initiate sales-below-cost investigations of an entire class or kind of merchandise when sales of merchandise in some such or similar categories are found to be below cost in previous reviews or the original investigation. In the case of Tzitzic, more than 90 percent of the sales of one flower type were sold below the COP in the 1988-1989 review. Thus, absent evidence that Tzitzic changed its selling practices, the Department had reason to believe that Tzitzic was still selling subject merchandise below the COP for purposes of the 1989-1990 review.

With respect to respondent's argument that the Department should have used BIA for only one flower type as was done in the case of Rancho Mision, the situation with regard to Tzitzic is entirely different. As stated in the Preliminary Results with respect to Tzitzic, "Absent the information required in Section D, we were unable to determine whether home market sales were made at prices above the cost of production, nor could we assume that all

home market sales were made at prices below the cost of production and base foreign market value on construction (sic) value." By comparison, Rancho Mision had no home market or third country sales of one flower type which accounted for a very small percentage of its total sales. Unlike Tzitzic, Rancho Mision was not involved in a COP investigation. Therefore, the fact that Rancho Mision did not respond to Section D for this one flower type did not affect the entire calculation of FMV.

#### *Comment 7*

Rancho Mision maintains that the Department's determination that it failed verification is unsupported by the record, and that the Department's verification report showed that Rancho Mision's response was in fact accurate and complete. Rancho Mision, moreover, contends that the Department acted arbitrarily and capriciously in rejecting its voluminous verified data, and should base its final results on data submitted by Rancho Mision.

Petitioner claims that the Department listed in detail in the Preliminary Results the inadequacies and deficiencies contained in Rancho Mision's questionnaire responses, and that the Department's conclusions concerning Rancho Mision are fully supported by the verification report.

#### *DOC Position*

We agree with petitioner. We have listed in detail the inadequacies and deficiencies contained in Rancho Mision's questionnaire responses in the Preliminary Results and in the verification report. Rancho Mision's case brief addresses none of the specific deficiencies listed in those documents.

#### *Comment 8*

Tzitzic, Rancho Mision, and Florex contend that the Department applied inconsistent policies and methodologies between flower companies at verification resulting in less favorable treatment for themselves. Respondents claim that the Department allowed a finding of completeness for Rancho el Toro and Rancho el Aguaje based only on partial completeness and that the Department personnel verifying these two respondents bent the rules to allow the verifications to succeed. In contrast, respondents argue that their verification team determined that Rancho Mision failed verification due to incompleteness, did not allow Rancho Mision time to make certain corrections, and adopted "a hardline and even hostile approach."

Petitioner notes that Florex, Rancho Mision, and Tzitzic allege that the Department acted in a biased and unfair manner towards them, yet failed to submit evidence to support their claim. Therefore, petitioner argues that these allegations should be ignored.

#### *DOC Position*

We agree with petitioner. The Department did not apply different verification standards to different companies. Concerning respondents' allegation that the Department applied different completeness tests, we noted in the Preliminary Results that although we were unable to utilize our normal verification techniques to test the completeness of Rancho el Aguaje and Rancho el Toro's cost responses, we were able to test completeness by examining internal records and found no evidence that these companies systematically underreported their costs. To the contrary, Rancho Mision could provide no documentation whatsoever to establish the total volume and value of ESP sales, nor could Rancho Mision explain how it arrived at the various total volume and value figures reported by it in its responses. We consider these deficiencies to be very significant. As for respondents' contention that one team applied a different set of standards to them, respondents have submitted no evidence in support of their claim, nor have they been able to explain the significant deficiencies found at verification. Also, with respect to respondent's argument that the Department did not allow Rancho Mision time to make certain corrections, we in fact did allow respondent additional time subsequent to verification to make corrections. However, on March 22, 1991, respondent informed the Department that it would not be able to supply the Department with any additional information.

#### *Comment 9*

Rancho el Aguaje and Rancho el Toro contend that the Department should compare CV to monthly U.S. prices which have been weight-averaged by type, not grade. In the absence of some type of adjustment to CV to reflect the relative cost or value differences of the flower grades produced, the Departments should use a CV based on type of flower. Finally, these respondents state that the methodology used for the preliminary results of comparing a non-grade-specific CV to grade-specific U.S. prices is inconsistent with Department precedent in earlier administrative reviews involving fresh cut flowers from Mexico as well as

reviews of the antidumping duty order on fresh cut flowers from Colombia.

#### *DOC Position*

We agree with respondents. For the final results, we have calculated weighted-average monthly U.S. prices by type of flower, without regard to specific grades.

#### *Comment 10*

Rancho el Aguaje and Rancho el Toro argue that in calculating CV the Department should first convert monthly costs incurred in pesos into dollars before computing an annual CV. Respondents argue that the use of an annualized CV in effect ascribes constant peso costs to flower producers, irrespective of the inflation rate. Moreover, after converting the annualized CV on a monthly basis, this methodology results in declining CVs, expressed in dollar terms, which is contrary to the fact that peso costs were actually rising throughout the period of review.

Petitioner claims that the Department correctly used monthly exchange rates in the calculation of CV. Petitioner argues that since the Department is using a monthly average U.S. price, a monthly average exchange rate is also appropriate. Petitioner further claims that if the actual costs in dollar terms declined over the POR, then the use of the monthly U.S. exchange rate is reasonably representative of this trend. Finally, petitioner states that respondents provide no analysis to support their claim that actual costs in dollar terms did not decline.

#### *DOC Position*

This issue is moot with respect to Rancho el Aguaje and Rancho el Toro because both companies would have margins of 0.00% irrespective of this adjustment. Moreover, with respect to Florex, the other company which arguably would be entitled to such an adjustment if we were to agree with respondents, we could not adjust Florex's calculations because it did not submit monthly costs.

#### *Comment 11*

Rancho el Aguaje and Rancho el Toro claim that the Department's recalculation of the credit period overstated imputed credit expenses because the revised period included the number of days between receipt of payment and the date on which such payments were cashed or deposited in the ranch's bank account. Respondents argue that there is no basis in the record to support the Department's assumption that payment was not received until the

checks were tendered to a bank. Therefore, respondents contend that the original payment dates reported, amended to incorporate corrections identified at verification, should be used to compute imputed credit costs.

Petitioner argues that the Department correctly recalculated the credit period associated with imputed credit expenses. Petitioner states that the Department considers all receivables to be financed for the period of delayed payment, which in this case would be the date on which the checks were either cashed or deposited into the respondents' bank accounts.

#### *DOC Position*

We agree with petitioner. It is the Department's practice to calculate imputed credit cost to a producer using the period between the time that the producer ships its merchandise and the time that it deposits the funds received from that sale into its bank account.

#### *Comment 12*

Rancho El Aguaje contends that the Department double-counted indirect production costs associated with its flower production in the month of April 1989. Rancho El Aguaje argues that the Department did not rely on an amended response which removed the double counting.

#### *DOC Position*

The Department agrees with Rancho El Aguaje and has revised its calculations for the final results of this review.

#### **Final Results of the Review**

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Margin (percent)
Florex .....	264.43
Rancho el Aguaje .....	00.00
Rancho el Toro .....	00.00
Rancho Mision el Descanso .....	24.33
Tzitzic Tareta .....	39.95
Visaflor .....	29.40

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions concerning all respondents directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Act, the Department will require a cash deposit

of estimated antidumping duties based on the above margins on entries of this merchandise from Mexico. The cash deposit rate for all other producers/exporters shall be 0.00 percent.

Generally, we assign the highest non-BIA rate calculated for any responding firm in the current review to future entries of the subject merchandise from all other producers/exporters not reviewed. For the reasons stated in the Preliminary Results and reiterated herein, however, we find it inappropriate to use Florex's rate as the cash deposit rate for producers/exporters not related to Florex. Therefore, we are using the 0.00 percent rate calculated for both Rancho el Aguaje and Rancho el Toro, the next highest calculated rate, as the "all other" rate. As these two companies represent the majority by volume and value of exports of the subject merchandise from Mexico during the POR, we feel it is appropriate to base the "all other" rate on their calculations.

These deposit requirements are effective for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(8)(1990).

Dated: June 21, 1991.

Eric I. Garfinkel,

*Assistant Secretary for Import Administration.*

[FR Doc. 91-15486 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-063]

### **Preliminary Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Paulo F. Mendes, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Washington, DC 20230 at (202) 377-5050.

#### **Preliminary Results**

We preliminarily determine that net subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended

(the Act), are being provided to manufacturers or exporters in India of certain iron-metal castings (castings). This review covers the period of January 1, 1987 through December 31, 1987 and the following programs:

- International Price Reimbursement Scheme (IPRS)
- Pre-Shipment Export Loans
- Post-Shipment Export Loans
- Income Tax Deduction Under Section 80HHC
- Market Development Assistance Grants
- Sale of Import Replenishment License
- Cash Compensatory Support Scheme
- Income Tax Deduction Under Section 80I
- Preferential Freight Rates
- Import Duty Exemptions Available to 100 Percent Export-Oriented Units
- Free Trade Zones

The weighted-average net subsidies are shown in the "Preliminary Results of Administrative Review" section of this notice.

#### **Case History**

On October 16, 1980, the Department published its countervailing duty order on castings from India (45 FR 68650). On January 18, 1991, the Department published the final results of its most recently completed administrative review for the period January 1, 1986 through December 31, 1986 (56 FR 1976).

Since the notice of initiation of this administrative review (53 FR 48951, December 5, 1988), the following events have occurred. On November 16, 1990, we presented a questionnaire to the Government of India and the manufacturers and exporters of castings. On February 8, 1991, we received the Government's response and all the company responses, except for Samitex Corporation (Samitex) and Commex Corporation (Commex). Samitex later responded on February 15, 1991. On April 3, 1991, we presented a supplemental questionnaire to the Government of India and the manufacturers and exporters of castings. We received responses to this supplemental questionnaire on April 22, 1991. From April 26 through May 3, 1991, we conducted verification in India of the government response and the company responses of Super Castings (India) (Super Castings), R.B. Agarwalla and Company (Agarwalla), and Crescent Foundry Co. Pvt. Ltd. (Crescent) (hereinafter collectively the verified companies). We also verified the amount of IPRS benefits received by RSI India Pvt. Ltd. (RSI). On May 22, 1991,

additional information was submitted on behalf of the verified companies.

#### **Scope of Review**

The imports covered by this review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access to or drainage for public utility, water, and sanitary systems. During the review period, this merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item numbers 657.0950 and 657.0990. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050. Although the TSUSA and HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### **Certification of Questionnaire Responses**

Section 1331 of the Omnibus Trade and Competitiveness Act of 1988 amended the Act by requiring that:

Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge. (19 U.S.C. 1677e(a))

Pursuant to this amendment, the Department promulgated procedural regulations which provide that:

(i) *Certifications.* Any interested party which submits factual information to the Secretary must submit with the factual information the certification in paragraph (i)(1) and, if the party has legal counsel or another representative, the certification in paragraph (i)(2) of this section:

(1) For the interested party's official responsible for presentation of the factual information: "I, (name and title), currently employed by (interested party), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate."

(2) For interested party's legal counsel or other representative: "I, (name), of (law or other firm), counsel or representative to (interested party), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (interested party), I have no reason to believe that this submission contains any material misrepresentation or omission of fact." (19 CFR 355.31(i) (1) and (2))

In the present administrative review, the Department issued a questionnaire to the Indian producers of castings. This

questionnaire specifically asked if the producers had received certain types of post-shipment export financing. (See, page 12 of the company questionnaire.) In their questionnaire responses, each of the companies indicated that they had not received any post-shipment financing during the period of review. These questionnaire responses were accompanied by certifications from the respondent companies and their legal counsel.

During verification, we discovered that each of the three verified companies had, in fact, clearly received post-shipment financing. No explanation was offered as to why the statements in the certified questionnaire responses were inaccurate.

The certification of factual information is a relatively new requirement, and one the Department intends have real meaning. To treat the requirement otherwise would violate our obligation to administer faithfully the provisions of the Act and would irreparably damage the integrity of Departmental procedures. Therefore, the Department intends to take the following actions. With respect to the relevant parties involved in this administrative review, the Department is referring the matter to the Department of Justice and the U.S. Customs Service to determine whether any relevant statutes within their jurisdiction have been violated and whether further action is warranted. Additionally, the Department will begin formulating a set of procedures for handling cases involving certification issues. In this way, we will continue to ensure that the responses the Department receives and uses to make its determinations are thorough and accurate. We have not, however, reached any conclusion with respect to the circumstances of this particular case.

#### Analysis of Programs

As mentioned above, we did not receive a response to our questionnaire from Commex. Therefore, as the best information available, for each program preliminarily determined to be countervailable, we are assigning Commex the highest company subsidy rate found for any company.

Based on verification and our analysis of the responses to our questionnaires, we preliminarily find the following:

#### I. Programs Preliminarily Found To Confer Subsidies

##### A. International Price Reimbursement Scheme (IPRS)

On February 9, 1981, the Government of India introduced the IPRS for

exporters of products with steel inputs. The purpose of the program is to rebate the difference between higher domestic and lower international prices of steel. On September 28, 1983, the Government of India extended the IPRS to include pig iron, the primary input for the production of castings.

The rebate is funded through collection of a levy on all domestic purchases of steel, pig iron and scrap. The Joint Plant Committee (JPC), a government-directed organization composed largely of pig iron and steel producers, sets domestic steel and pig iron prices. The JPC also determines the specific levy for each pig iron and steel product based on the anticipated need for these inputs in exported products.

The Engineering Export Promotion Council (EEPC), a non-profit organization funded by the Government of India and private firms, processes the claims for and disburses the IPRS rebate. The IPRS rebate is based on the differential between domestic and international prices of pig iron, using a standard pig iron consumption factor of 110 percent, which includes a ten percent allowance for waste. Based on verification and our analysis of questionnaire responses, we preliminarily determine that all castings exporters covered by this review obtained IPRS rebates for pig iron.

We consider a government program that results in the provision of an input to exporters at a price lower than to producers of domestically-sold products to confer a subsidy within the meaning of section 771(5)(A) of the Act. We consider the benefit to be the entire IPRS rebate. Therefore, we preliminary determine the IPRS program to confer a countervailable export subsidy.

For any given review period, it has been our practice to consider the benefit from the IPRS program to equal the total amount of IPRS benefits received during the review period, even if some amounts received during the review period related to exports made in the previous year. In the current review all the companies, except Crescent and Uma Iron and Steel Works (Uma), only reported IPRS benefits associated with 1987 shipments. These companies did not report IPRS benefits received in 1987 which were related to 1986 shipments. We verified the IPRS information Crescent submitted, and during verification obtained the amount of IPRS benefits received in 1987 by Super Castings, Agarwalla and RSI. (These amounts received in 1987 included IPRS rebates relating to 1987 and 1986 shipments.)

For those companies that did not report the IPRS amounts associated with

1986 shipments which were received in 1987, we approximated these amounts as follows. We first calculated the amount of IPRS rebates received in 1987 which were attributable to 1986 shipments for the three verified companies, RSI and Uma. Next, we divided this amount by the total amount of all IPRS rebates received in 1987. We then used this percentage to adjust upward the reported amount of IPRS benefits which only included benefits associated with 1987 shipments.

We preliminarily determine the net subsidy from this program to be 31.08 percent *ad valorem* for all manufacturers and exporters in India of castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. RSI India Pvt. Ltd .....	7.77
2. Select Steel Ltd .....	35.71
3. Carnation Enterprise Pvt. Ltd.....	36.58
4. Uma Iron and Steel Works.....	20.81
5. Commex Corporation .....	36.58

We verified that the Government of India terminated the IPRS program with respect to castings exported to the United States effective June 30, 1987. During verification we saw evidence of two shipments of castings to the United States made in the first week of July 1987 for which IPRS rebates were received. However, we preliminarily determine that these two rebates were exceptions, granted because of shipping and handling difficulties, and that the IPRS program otherwise has been terminated for exports of castings to the United States. Therefore, for purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

#### B. Pre-Shipment Export Loans

The Reserve Bank of India, through commercial banks, provides pre-shipment or "packing" credits to exporters. With these pre-shipment loans, exporters may purchase raw materials and packing materials based on presentation of a confirmed order or letter of credit. In general, the pre-shipment loans are granted for a period of 90 to 180 days, with penalty charges for late interest payments. Because only exporters are eligible for these pre-shipment loans, we determine that they

are countervailable to the extent that they are provided at preferential rates.

During the review period, the interest rate on pre-shipment export loans was 9.5 percent per annum. The maximum comparable commercial interest rate during fiscal year 1986-1987 for small-scale industries with loans from 200,000 to 2,500,000 rupees, as quoted by the Reserve Bank of India in its bulletin entitled "Report on Trend and Progress of Banking in India" for fiscal year 1986-1987, was 16.5 percent from January through March, and 15.5 percent from April through December. Since all castings manufacturers and exporters subject to this review are characterized as small-scale industries and because no castings firms reported pre-shipment loans exceeding 2,500,000 rupees during the review period, we have used these two rates to calculate an interest rate benchmark for the year. We did so by weight-averaging the two interest rates based on the amount of time the two above rates were in effect. We used the resulting figure of 15.75 percent as our benchmark interest rate. We compared this benchmark to the interest rate charged on pre-shipment financing under the program and found that the interest rate charged was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit on those preferential loans for which interest was paid during 1987, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 26, 1984); see also, *Alhambra Foundry v. United States*, 626 F. Supp. 402 (CIT, 1985).

During verification, we obtained information from each of the three companies concerning the total amount of interest paid on pre-shipment financing during the review period. For the non-verified companies, we used the reported amount of interest paid on pre-shipment financing relating to either exports of the subject merchandise to the United States or total exports to the United States.

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. The difference between these amounts is the benefit. We allocated the benefit to either total exports, exports of the subject merchandise to the United States or

total exports to the United States, depending on how the amount of pre-shipment financing was reported or verified. On this basis, we preliminarily determine the net subsidy from this program to be 0.40 percent for all manufacturers and exporters in India of castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd.....	1.55
2. Select Steel Ltd.....	0.00
3. Carnation Enterprise Pvt. Ltd.....	0.00
4. Uma Iron and Steel Works.....	0.02
5. Commex Corporation.....	1.55

#### C. Post-Shipment Loans

As mentioned above, we discovered during verification that each of the three verified companies failed to report post-shipment financing loans. The response from the Government of India on this program only referred to the company responses. Super Castings received post-shipment financing in the form of "post-shipment advances against IPRS," and Agarwalla and Crescent received post-shipment financing in the form of "transit interest." Post-shipment advances against IPRS are loans based on expected IPRS rebates. Post-shipment financing also includes bank discounting of foreign customer receivables. Because only exporters are eligible for these post-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We verified that the rate of interest under both types of post-shipment financing was 9.5 percent per annum. Moreover, during verification one of the companies was not able to provide documentation to prove that certain loans were, in fact, not post-shipment loans or non-preferential. Therefore, as the best information available, we are treating these loans as post-shipment loans made at the preferential rate of 9.5 percent.

For the reasons stated above in the pre-shipment loans section, we are using 15.75 percent as our short-term interest rate benchmark. We compared this benchmark to the interest rate charged on post-shipment financing under this program and found that the interest rate charged under this program was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable. To

calculate the benefit, we followed the same short-term loan methodology discussed above. We then divided the benefit by the verified companies' total export sales.

As noted above, the government response on this program referred us to the company responses. Since we view the verification of the three companies with regard to post-shipment financing as constituting the overall verification of that program, we have preliminarily determined that exports of the non-verified companies also benefited from the program. As the best information available, for this purpose, we weight-averaged the rates of the three companies and applied the result to the non-verified companies.

On this basis, we preliminarily determine the net subsidy from this program to be 1.47 percent for all manufacturers and exporters in India of castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd.....	1.41
2. Select Steel Ltd.....	1.41
3. Carnation Enterprise Pvt. Ltd.....	1.41
4. Uma Iron and Steel Works.....	1.41
5. Commex Corporation.....	2.06

#### D. Income Tax Deduction Under Section 80HHC

Under section 80HHC of the Finance Act of 1983, for tax returns filed in 1987, the Government of India allowed exporters to deduct one percent of export sales and five percent of the incremental increase in export sales over the previous fiscal year. Because this program is only available to exporters, we preliminarily determine it to be countervailable. To calculate the benefit, we multiplied the income tax deductions of each company claiming the benefit by the corporate income tax rate and divided the result by its total exports.

We preliminarily determine the net subsidy from this program to be 1.09 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd .....	0.00
2. Select Steel Ltd .....	4.45
3. Carnation Enterprise Pvt. Ltd .....	2.74
4. Uma Iron and Steel Works .....	0.50
5. Commex Corporation .....	4.45

#### E. Market Development Assistance (MDA) Grants

The Federation of Indian Export Organization administers, and the Ministry of Commerce approves, all MDA grants. The purpose of the program is to provide grants-in-aid to approved organizations (*i.e.*, export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions. Because these MDA grants are available only to exporters, we preliminarily determine that such grants are countervailable.

We verified that only Kejriwal Iron and Steel Works received MDA grants related to exports of the subject merchandise to the United States during the review period. Because the grant represented less than 0.5 percent of Kejriwal's export sales during the review period, we expensed the grant in the year of receipt (1987). To calculate the benefit, we divided the value of the grant received by the value of Kejriwal's total export sales to the United States in 1987.

We preliminarily determine the net subsidy from this program to be 0.01 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd .....	0.00
2. Select Steel Ltd .....	0.00
3. Carnation Enterprise Pvt. Ltd .....	0.00
4. Uma Iron and Steel Works .....	0.00
5. Commex Corporation .....	0.05

#### F. Sale of a Replenishment License

The Ministry of Commerce administers India's import licensing system. One type of license in India is the replenishment license. These

licenses are provided subsequent to export so that companies can replace the imported components used in the production of the exported product. Imports under these licenses are subject to customs duties and are not necessarily used in production of exports. Because exporters receive these licenses based on their status as an exporter, we consider the proceeds resulting from sales of these licenses a countervailable subsidy.

During verification, we discovered that Agarwalla sold a replenishment license during the review period. Because the proceeds from this sale represented less than 0.50 percent of Agarwalla's export sales during the review period, we expensed the amount received to the year of receipt, 1987. To calculate the benefit from this sale, we divided the amount Agarwalla received on selling the license by its total exports to all markets.

We preliminarily determine the net subsidy from this program to be 0.01 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd .....	0.00
2. Select Steel Ltd .....	0.00
3. Carnation Enterprise Pvt. Ltd .....	0.00
4. Uma Iron and Steel Works .....	0.00
5. Commex Corporation .....	0.04

## II. Programs Preliminarily Found Not To Confer Subsidies

#### A. Cash Compensatory Support (CCS) Program

In 1966, the Government of India established the CCS program to rebate indirect taxes on exported merchandise. We verified that the rebate for exports of castings was set at a maximum of five percent for the review period, and is paid as a percentage of the FOB invoice price.

To determine whether an indirect tax rebate system confers a subsidy, we must apply the following analysis. (See, Preliminary Affirmative Countervailing Duty Determination: Textile Mill Products and Apparel From Indonesia, 49 FR 49672, December 21, 1984.) First, we examine whether the system is intended to operate as a rebate of indirect taxes and/or import duties.

Next, we analyze whether the government properly ascertained the level of the rebate. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the rebate system meets these conditions, the Department will consider that the system does not confer a subsidy if the amount rebated for duties and/or indirect taxes on physically incorporated inputs does not exceed the fixed amount set forth in the rebate schedule for the exported product. Based on verification, and the Department's previous examination of the CCS program (see, e.g., Certain Iron Metal Castings From India: Final Results of Countervailing Duty Administrative Review, 55 FR 1976, January 18, 1991), we preliminarily determine that the CCS rebate meets all the above-mentioned criteria. Furthermore, in this review we verified that the rebates under this program continue to reasonably reflect the incidence of indirect taxes on inputs. On this basis, we preliminarily determine that the CCS program provides no overrebate and, therefore, is not countervailable.

#### B. Income Tax Deduction Under Section 80I

Section 80I of the Indian Finance Act generally provides for a tax deduction of 25 percent to "new industrial undertakings." We verified that this program is not limited to a specific enterprise or industry or group of enterprises or industries on either a *de jure* or *de facto* basis. Therefore, we preliminarily determine this program to be not countervailable.

## III. Programs Preliminarily Determined To Be Not Used

- A. Extension of the Free Trade Zones
- B. Preferential Freight Rates
- C. Import Duty Exemptions Available to 100 Percent Export-Oriented Units

#### Preliminary Results of Review

In accordance with § 355.22(d), we preliminarily determine that the following net subsidies exist for the period January 1, 1987 through December 31, 1987:

Manufacturer/exporter	Net ad valorem subsidy (per-cent)
RSI India Pvt. Ltd .....	10.74
Select Steel Ltd .....	41.57
Carnation Enterprise Pvt. Ltd .....	40.74
Uma Iron and Steel Works .....	22.75

Manufacturer/exporter	Net ad valorem subsidy (percent)
Commex Corporation.....	44.73
All Other Manufacturers or Exporters .....	34.05

Upon completion of this administrative review, the Department will issue appraisal instructions to the U.S. Customs Service. The Department also intends to instruct the U.S. Customs Service to collect 3.84 percent estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

#### Public Comment

In accordance with 19 CFR 355.38, we plan to hold a public hearing, if requested, on August 1, 1991, at 2 p.m. in room 3708, to afford interested parties the opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of case briefs must be submitted to the Assistant Secretary no later than July 23, 1991. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than July 30, 1991. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are published 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. 91-15487 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DS-M

#### National Institute of Standards and Technology

[Docket No. 910529-1129]

#### Test Method and a Validation Test Service for the Federal Information Processing Standard (FIPS 128) for Computer Graphics Metafile (CGM) and the Computer-aided Acquisition and Logistic Support (CALS) CGM Application Profile (AP)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice of a test method and a one-year trial validation test service for the Federal Information Processing Standard (FIPS) 128, Computer Graphics Metafile and the CALS CGM Application Profile (MIL-D-28003).

**SUMMARY:** The NIST Validation Test Service will be used to assess the degree to which binary encoded CGM files conform to FIPS 128 and MIL-D-28003. The NIST will use the trial test service period to verify the accuracy and completeness of the CGM test procedures. To assess the suitability of the test method and the test procedures for testing conformance to the FIPS and CALS AP, NIST solicits the views of industry, the public, and State and local governments.

**DATES:** The test service started May 1, 1991, and will continue for a one-year trial period through May 1992.

**ADDRESSES:** Written comments concerning the test method and the establishment of the CGM Test Service should be sent to: National Institute of Standards and Technology; ATTN: CGM Test Service, Technology Building, room B154, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3265.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Federal Information Processing Standard Publication (FIPS PUB) 128, Computer Graphics Metafile, was

approved on March 16, 1987, and became effective August 10, 1987. The Computer-aided Acquisition and Logistics Support (CALS) CGM Application Profile (MIL-D-28003) was approved for use all departments and agencies of the Department of Defense on December 20, 1988. In accordance with FIPS PUB 128 and MIL-D-28003, the delivery of two-dimensional graphics data to Federal agencies should be in the digital format of the CGM. The purpose of the graphics software standard is to facilitate the transfer of graphical information between different graphical software systems, different graphical devices, and different computer graphics installations. Federal agencies may require conformance to FIPS PUB 128 and MIL-D-28003 whether computer graphics metafile systems are developed internally, acquired as part of an ADP system procurement, acquired by separate procurements, used under the ADP leasing arrangement, or specified for use in contracts for programming services. Testing may be required in order for agencies to determine if the CGM file conforms to the FIPS PUB and MIL-D-28003. The CGM Registered Validation Report provided from the NIST trial validation test service will be sources for Federal agencies to use in making this determination. The CGM Registered Validation Report will be listed in NISTIR 4500, "Validated Processor List", available from NIST, telephone (301) 975-2821.

#### Updates to the Test Method and Procedures

The NIST will use the CGM Validation Test Software as the test method for validating CGM files. The selection of the CGM Validation Test Software was announced in the Commerce Business Daily, June 18, 1990.

The Validation Test Software and Test procedures will be periodically updated and used as the basis for validating metafiles formatted according to FIPS PUB 128 and MIL-D-28003. The update process will be used to correct errors identified in the CGM Validation Test Software and to introduce new or modified programs as appropriate. Modification to the Test Software is also intended to ensure that computer graphics metafiles are being formatted according to the technical specifications of the standard. Should an interpretation of the FIPS or Military Specification be made that would affect the test software, these changes would also be reflected during the update process.

### Obtaining Validation Services

The NIST provides validation test services on a cost-reimbursable basis. These services are available to both the producers and users of CGM files. Upon receipt of a request for validation, NIST will supply the client with a CGM Information Pack which will include a description of the test service and procedures, and a Testing Request form. To have a CGM tested, the client must return a completed Testing Request form along with proper payment to the NIST. The Validation Test Service Software is available from CTS, Gales Ferry, CT 06335

**Authority:** Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Dated: June 24, 1991.

**John W. Lyons,**  
Director.

[FR Doc. 91-15443 Filed 6-27-91; 8:45 am]  
BILLING CODE 3510-CN-M

### National Oceanic and Atmospheric Administration

#### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on July 8-12, 1991, at the Radisson Hotel, 17001 Pacific Highway South, Seattle, WA. Except as noted below, the meetings are open to the public.

The Council will begin its meeting on July 10 at 8 a.m., in a closed session (not open to the public), to discuss litigation and personnel matters. The Council's open session begins at 9 a.m., to consider administrative and other matters and salmon management issues. Also on July 10, the Council will accept comments on issues not on the agenda. On July 11, beginning at 8 a.m., Groundfish management items will be addressed and that discussion will continue into July 12. Also on July 12, Coastal pelagic species management issues will be discussed after the completion of the groundfish items.

Salmon management items on the agenda are: (1) Sequence of events and current status of the fishery; (2) guidelines for making inseason adjustments due to unusual weather; (3) consider adjustments in the 1991 fishery off California due to unusual weather;

(4) status reports on high seas drift net fisheries; (5) analysis of Columbia River Sportfishing Association proposal for determining recreational subarea allocations; (6) an update on recent actions of the National Marine Fisheries Service to propose listing of certain Columbia River salmon stocks under the Endangered Species Act; and (7) a status report on reviews underway to determine causes of stock decline for Oregon coastal natural coho salmon and certain Puget Sound chinook and coho stocks. The Council also will address habitat issues affecting fisheries in its jurisdiction after the salmon management items are completed.

Groundfish management issues: (1) Status of regulations implementing Council actions; (2) review of the 1991 Pacific whiting fishery; (3) review specifications of limited entry options and possible selection of preferred options for public review; (4) determination of the consistency of the California gill net ban with the Council's groundfish plan and applicable law; (5) inseason management measure adjustments; (6) feasibility of a comprehensive observer program for groundfish vessels; (7) summary of preliminary stock assessments; and (8) identification of issues and alternatives for 1991 management measures.

Coastal pelagic species management issues: (1) Anchovy spawning biomass and quotas for 1991-1992, and (2) status report on development of an anchovy plan amendment to add other coastal pelagic species.

The Scientific and Statistical Committee will meet on July 8 at 10 a.m., to address scientific issues on the Council's agenda, and will reconvene on July 9 at 8 a.m.

The Salmon Subcommittee will meet on July 10 at 9 a.m., to review the chinook harvest model for the fishery north of Cape Falcon.

The Legislative Committee will meet on July 9 at 10 a.m., to discuss the desirability of a fee or tax for at-sea fish processing comparable to that paid by shoreside processors.

The Groundfish Advisory Subpanel will meet on July 9 at 1 p.m., to address groundfish items on the Council's agenda and will reconvene on July 10 at 8 a.m.

The Habitat Committee will meet on July 9 at 1 p.m., to address issues affecting habitat of fish stocks managed by the Council.

The Budget Committee will meet on July 10 at 3 p.m., to review the status of the Council's 1991 budget.

The Ad Hoc Committee on Adjustments Due to Unusual Weather will meet on July 9 at 3 p.m., to

recommend guidelines for making adjustments to salmon seasons due to unusual weather.

The Groundfish Stock Assessment Workshop will meet on July 9 at 7 p.m., in an informal workshop, open to the public, to review preliminary stock assessments for certain groundfish species.

The Enforcement Consultants will meet on July 10 at 7 p.m., to consider the enforcement ramifications of management issues on the Council agenda.

Detailed agendas for the above meetings will be available to the public after June 28, 1991. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: June 24, 1991.

**David S. Crestia,**

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

[FR Doc. 91-15496 Filed 6-27-91; 8:45 am]  
BILLING CODE 3510-22-M

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on July 8-11, 1991, at the Reach Hotel, 1435 Simonton Street, Key West, FL.

Council: The Council will begin its meeting on July 10 at 8:30 a.m., and recess at 5 p.m. The agenda is as follows: (1) From 8:45 a.m., to 9:45 a.m., discuss the National Marine Fisheries Service Marine Mammal Program; (2) from 9:45 a.m., to 10:15 a.m., hear public testimony on the Tortugas Shrimp Sanctuary; (3) from 10:15 a.m., to 10:30 a.m., address Committee Recommendations on the Tortugas Shrimp Sanctuary; (4) from 10:30 a.m., to 2:30 p.m., review the Shrimp Amendment #6 Options Paper; and (5) from 2:30 p.m., to 5 p.m., review the Mackerel Amendment #6 Options Paper. The Council meeting will continue on July 11, as follows: (1) From 8:30 a.m., to 10:30 a.m., review Mackerel Amendment #6 Options Paper; (2) from 10:30 a.m., to 2:30 p.m., review Reef Fish Amendment #4 Options Paper; and (3) receive the Administrative Policy and Ad Hoc Limited Entry Committee Reports, followed by Law Enforcement Reports and Director's Reports. Adjournment is at 4 p.m.

Committees: On July 8 at 1 p.m., the Administrative Policy Committee and the Reef Fish Management Committee will meet. The meeting will adjourn at 5:45 p.m. On July 9 at 8 a.m., the Shrimp Management Committee and the Mackerel Management Committee will meet. The meeting will adjourn at 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: June 24, 1991.

David S. Crestin,

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

[FR Doc. 91-15495 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-22-M

### Sea Grant Review Panel; Meeting

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, law and policy, program management and funding procedures, coastal business initiatives, long-range planning and priorities, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business. A nomination and election will be held for Chair Elect.

**DATES:** The announced meeting is scheduled during two days: Tuesday, July 30, 1991 (10 a.m.-12 noon and 1-4 p.m.), and Wednesday, July 31, 1991, 8-10 a.m.

**ADDRESSES:** Denver Marriott Hotel City Center, 1701 California Street, NW., Denver, Colorado 80202-9838.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1335 East-West Highway, #5104, Silver Spring, Maryland 20910, (301) 427-2431.

**SUPPLEMENTARY INFORMATION:** The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209

of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

**Tuesday, July 30, 1991—10 a.m.—12 noon—Denver 1 & 2 Rooms**

Welcome to Dr. Knauss, NOAA Administrator

Dr. Knauss' Opening Remarks to the Panel

Complementary Roles for a Stronger Sea Grant Future

Open Discussion with Dr. Knauss

1. Panel Subcommittee Chairmen

2. Individual Panelists

3. Other Guests

Summary of Meeting

**Tuesday, July 30, 1991—1-4 p.m.—Denver 1 Room**

National Office Updates

Appropriations/Reauthorization Budget

Personnel

Legislation

New Procedures

Planning Task Forces

States of Panel Member Terms

Fellows Update

Subcommittee Reports

Executive

New Technology

Program Management and Funding Procedures

Coastal Business Initiatives

State Advisory Committee Workshop

Long-Range Planning and Priorities

Sea Grant/Private Industry

Partnership

Sea Grant Interaction with Other

Agencies

Law and Policy

U.S.D.A. National Extension

Committee

Other Reports

Site Visit Feedback

**Wednesday, July 31, 1991—8-10 a.m.—Colorado B Room**

Closeout Old Business

Nominations & Election of Vice Chair

Transition

New Business

The meeting will be open to the public.

Dated: June 24, 1991.

Ned A. Ostenso,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 91-15497 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-12-M

### Marine Mammals: Issuance of Permit; Dr. Randall Davis (P477)

On May 16, 1991, notice was published in the *Federal Register* (56 FR 22701) that an application had been filed by Dr. Randall W. Davis, Department of Marine Biology, Texas A&M University, P.O. Box 1675, Galveston, Texas 77553, and Dr. Patrick Butler, School of Biological Sciences, University of Birmingham, Birmingham, U.K. B15, 2TT, to obtain eight (8) rehabilitated beached or stranded California sea lions (*Zalophus californianus*) deemed suitable for release. The animals will be obtained from Sea World, San Diego to be used for scientific studies testing a data-storage system for use in determining energy budgets. Upon completion of research the animals will be released into the wild.

Notice is hereby given that on June 18, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427-2289); and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731 (213/514-6196).

Dated: June 20, 1991.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management.

[FR Doc. 91-15385 Filed 6-27-91; 8:45 am;]

BILLING CODE 3510-22-M

### Technology Administration

[Docket No. 910525-1125]

#### Invitation for Proposals Under the Advanced Technology Program

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Notice; invitation for proposals; notice of meeting.

**SUMMARY:** The Technology Administration invites applications for funding under the Advanced Technology Program (ATP), and announces a public meeting for all interested parties. Anyone interested in applying for funding under this Program must contact the ATP at the address shown below to obtain materials for applications. The

Advanced Technology Program is Program Number 11.612 in the Catalog of Federal Domestic Assistance.

**CLOSING DATE FOR APPLICATIONS:**

Proposals must be received at the address listed below no later than 3 p.m., E.D.T., on September 25, 1991.

**DATE OF PUBLIC MEETING:** A public meeting for parties considering making application for funding under the Advanced Technology Program will be held beginning at 9:30 a.m. on July 29, 1991, in the Red Auditorium, Administration Building, National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD, exit 10 off Interstate 270. Attendance at the public meeting is not required of potential proposers. The purpose of the meeting is to provide information regarding the ATP to potential applicants.

**NUMBER OF PROPOSALS:** Applicants must submit one signed original plus ten (10) copies of their proposals numbered 1 through 11, along with NIST Form 1262 (for Single Applicants) of Form 1263 (for Joint Venture Applicants) to The Advanced Technology Program at the address below. The Office of Management and Budget has approved the information collection requirements contained in this notice under provisions of the Paperwork Reduction Act (OMB control number 0693-0009).

**ADDRESSES:** Advanced Technology Program, Proposal Solicitation, ATP 91-01, room A430, Administration Building (Bldg. 101), National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** To receive application materials contact Gail Killen at (301) 975-2686 or write to the address shown above. The ATP facsimile number is (301) 869-1150.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Advanced Technology Program (ATP) is managed by the National Institute of Standards and Technology (NIST), an element of the Technology Administration of the Department of Commerce. ATP was established by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418, 15 U.S.C. 278n), and is operated under program procedures published in the *Federal Register*, dated July 24, 1990, on page 30140. The ATP assists U.S. businesses to improve their competitive position and promote U.S. economic growth by accelerating the development of a variety of pre-competitive generic

technologies<sup>1</sup> by means of cooperative research agreements. A cooperative research agreement is a funding instrument to provide financial assistance when substantial involvement is anticipated between the government and the recipient. NIST intends to select proposals for funding approximately six months (actual completion date depends on the number of applications received) after the closing date for applications.

Research and development activities cover a wide spectrum, from basic research at one extreme to the development of specific new products at the other. The Advanced Technology Program is intended to foster the development of technology that is beyond basic research, but not close to the stage of new product development. Thus the ATP will include the development of laboratory prototypes intended to establish technical feasibility but not prototypes of commercial products. The ATP will not fund projects to demonstrate commercial viability or projects involving market testing of specific products.

The purpose of the ATP as stated in Public Law 100-418 is to assist U.S. companies in creating and applying "generic technology" and research results so as to commercialize new technology more quickly and improve manufacturing processes. While it is hoped and intended that new products will ultimately result from work funded by the ATP, the program will not focus on giving participating companies a competitive advantage for specific new products. Rather, the focus will be on supporting work that has great economic potential with broad benefits. Accordingly, joint ventures are emphasized in the legislation establishing the ATP. This legislation states that the ATP should "avoid providing undue advantage to specific companies." The ATP is open to proposals in all areas of precompetitive generic technology.

**Invitation for Proposals:** The Technology Administration invites applications for funding for two types of proposals: (1) Technology Development Proposals from individual United States businesses (see Applicant Eligibility) or independent research institutes in amounts not to exceed \$2 million over three years, and, (2) Technology Development Proposals from qualified United States joint research and development ventures where ATP

support will serve as a catalyst for the proposed joint venture, and provided however, that the ATP share shall be a minority share of the cost of the venture for up to five years, and subject to the availability of ATP funds. Future or continued funding for multi-year projects will be at the discretion of the Technology Administration and will be contingent on such factors as satisfactory performance and the availability of funds.

**Funds Available for Cooperative Research Agreements:** Between \$20.0 and \$25.0 million will be available for awards in the form of cooperative research agreements resulting from this solicitation. Depending on the number and quality of proposals received from this solicitation, NIST reserves the right to allocate all or a portion of the funds that may be available in the FY 1992 budget to projects selected through this competition. The actual obligation of FY 1992 funds is contingent on their appropriation. The number of awards will depend on the amount of funding requested by the selected proposals.

**Applicant Eligibility:** ATP funding is available to United States businesses and certain United States joint research and development ventures. Eligible joint research and development ventures are defined in section 295.2(d) of the ATP Procedures.<sup>2</sup> The information package for applicants contains the ATP Procedures.

An additional eligibility requirement for those applying for fiscal year 1991 ATP funding has been mandated by the following amendment to this year's ATP Appropriation Bill (Public Law 101-515 Sec. 105):

A company shall be eligible to receive financial assistance from the Secretary of Commerce only if-

(A) The Secretary of Commerce finds that the company's participation in the Advanced Technology Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Secretary of Commerce to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of

<sup>1</sup> The terms "generic technology" and "pre-competitive technology" are defined in the Advanced Technology Program Procedures (15 CFR part 295). A copy of the Procedures is included in the Proposer's Kit.

<sup>2</sup> An eligible joint venture must consist of at least two organizations each of which is eligible to apply as a single applicant and both of which must participate in the proposed R&D program and contribute toward the matching funds requirement.

United States industry), and to procure parts and materials from competitive suppliers; and (B) either—

(i) The company is a United States-owned company; or

(ii) The Secretary of Commerce finds that the company has a parent company which is incorporated in a country which affords the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those funded through the Advanced Technology Program; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

As used in this section, the term "United States-owned company" means a company that has a majority ownership or control by individuals who are citizens of the United States.

All applicants should address the requirements of section 105(A) cited above in section 7 (Broad Based Benefits) of their proposal and provide an Assurance Statement of Ownership concerning whether all participants in the proposed program are United States-owned companies as defined above. Applications from single companies or from joint ventures involving one or more companies that are not United States-owned companies as defined above should also address the requirements of section 105(B)(ii) cited above in section 3 (Special Eligibility Requirements) of the proposal.

ATP funds may not flow directly to universities, Federal laboratories, or state agencies, although universities and federal laboratories may participate as members of an industry-led joint venture and (except for NIST) may receive funding via industry members of the joint venture. Non-profit independent research laboratories may also participate and receive funding either directly or indirectly. The participation of universities and Federal laboratories through cooperative research and development agreements in joint ventures or as subcontractors to single applicants funded by the ATP is encouraged. As a matter of policy, NIST's intramural programs cannot receive ATP funding from a joint venture (or its members), company or independent research institute funded by the ATP. However, NIST intramural programs may choose to collaborate with applicants where appropriate. Such collaboration will not increase or decrease an applicant's chances of receiving an award.

*Preparation of Proposals and Reporting Requirements:* The ATP application package contains detailed

guidelines for the preparation of proposals. Also included is information on reporting requirements. To be accepted for review, proposals must meet the following requirements:

1. The original proposal plus ten (10) copies must be delivered to the ATP at the address specified above before the closing time and date cited previously in this document.

2. The proposal must meet the requirements for format, length, and content described in the Information Requirements Document contained in the application kit for Proposal Solicitation 91-01.

3. The information contained in the proposal should adequately address *all* of the requirements of the Information Requirements Document. These include separate sections of the proposal describing the: (1) Research and Development Program, (2) Experience and Qualifications of the proposing organization, (3) Broad Based Benefits of the proposal, (4) Technology Transfer Benefits of the proposal, (5) Proposer's Level of Commitment and Organizational Structure, (6) Plan for addressing intellectual property rights requirements, and (7) Detailed budget.

4. The original and ten (10) copies of NIST Form 1262 (for single applicants) or 1263 (for joint venture applicants) must be bound with the proposal.

5. Single applicants must provide in their proposal a Nonpayment of Indirect Costs Assurance Statement and address the requirement that ATP funds not be used for payment of indirect costs in their budgets. Joint Venture applicants must provide in their proposal a Matching Funds Assurance Statement and address the requirement that ATP funds will cover less than 50% of the resources required to carry out the proposed project in their budgets.

6. All applicants must provide a United States-Owned Company Assurance Statement. Those proposals that involve the participation of organizations that are not United States-owned companies as defined previously must also address the requirements of section 105(B)(ii) of Public Law 101-515 noted above.

Proposals that fail to meet one or more of the above requirements will be considered non-responsive to this solicitation.

*Award Criteria for Technology Development Proposals:* Criteria that will be used to evaluate technology development proposals submitted in response to this notice appear in the ATP Procedures published at § 295.3(b) of title 15 of the Code of Federal Regulations. The information package

for applicants contains the ATP Procedures.

*The Proposal Review Process:* The proposal review process is described in the ATP Procedures at § 295.3(a) of title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures. The review process is expected to take approximately six months, although the process might take longer if an unusually large number of proposals is received.

*Other Requirements, Requests, and Provisions:* Applicants who have outstanding accounts receivable with the Federal Government will not be awarded a cooperative research agreement until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" must be submitted with any application for ATP funding. ATP Applicants are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a cooperative research agreement. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. The Advanced Technology Program does not involve the mandatory payment of any matching funds from state or local government and does not effect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program. Awards under ATP shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Dated: June 7, 1991.

Robert M. White,

*Under Secretary for Technology.*

[FR Doc. 91-14362 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DT-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On January 11, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 1180) of proposed additions to the Procurement List.

Comments were received from the current contractor for the portion of the Government requirement for the canteen which is the subject of this rulemaking and from a former contractor for the canteen. The former contractor objected to the cumulative impact on it of this addition and the 1985 addition of a part of the Government requirement for this canteen to the Procurement List. The former contractor also suggested that having nonprofit agencies employing persons with severe disabilities as the only source for the canteen would lead to lower quality and higher prices.

The current contractor objected to the proposed addition and another addition under consideration by the Committee on several grounds. These consisted of adverse impact on its business, including the previous and expected impacts of actions by the other mandatory source program and loss of return on recent equipment and tooling expenses; adverse impact on people with disabilities, who perform work on the canteens under a subcontract; adverse impact on its own employees, most of whom are minorities; increased prices to the Government; and the risk of having only one source for a critical defense item in an emergency situation.

According to data made available to the Committee, the former contractor has not supplied this canteen to the Government since early 1987. As this contractor cannot be dependent on

arguments concerning cumulative Government sales of the canteen, its impact of the two actions adding the canteen to the Procurement List must be considered an objection to the loss of future opportunities to bid on canteen contracts. The Committee does not consider this to constitute serious adverse impact on a contractor. Nonprofit agencies producing items on the Procurement List are required by law to sell them to the Government at a fair market price set by the Committee. They cannot use their position as the only source to raise the price beyond this level. They are also required to produce the item to a specification set by the Government, which does not permit them to reduce the quality of an item.

With respect to the current contractor, the Committee has determined that adding this canteen to the Procurement List will not have a serious adverse impact on that firm. The firm has already recovered from the previous impacts on its business by the other mandatory source, which has advised the Committee that the firm will continue to have the opportunity to compete for the other type of work in which it is engaged.

In addition, the firm continues to have the opportunity to compete for canteen cap business, which involves some of the same equipment involved in furnishing the canteen proposed for addition. Even if the canteen were to remain available for competitive procurement, the firm could lose its investment in equipment and tooling because it is not guaranteed contracts in the competitive bidding system. Similarly, the individuals employed directly by the contractor and the persons with disabilities employed by the subcontractor are not assured of continued employment under the competitive procurement system and, in the case of the individuals with disabilities, there is no guarantee that even if the current contractor obtains future contracts that it will continue to employ them through subcontracts. Under the circumstances, the Committee has determined that the assurance of employment for blind persons associated with the addition of this item outweighs the possible future employment benefits for minorities and individuals with disabilities.

The price to be paid by the Government for the canteens has been determined by the Committee to be consistent with the intent of the JWOD Act and the Committee's pricing procedures. Both require a "fair market" price and not the "lowest possible"

price. The Committee has also determined that the nonprofit agency proposed to supply the canteen has the capability to meet Government surge requirements.

After consideration of the material presented to its concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The action will not have a serious economic impact on any contractors for the commodity listed.
- c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List: Canteen, Water, Plastic (1-Qt.); 8465-01-115-0026; (Remaining Government Requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**  
*Executive Director.*

[FR Doc. 91-15456 Filed 6-27-91; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On April 19, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 16075) of proposed additions to the Procurement List.

The current contractor objected to the proposed addition and another addition under consideration by the Committee on several grounds. These consisted of adverse impact on its business, including the previous and expected impacts of actions by the other mandatory source program and loss of return on recent equipment and tooling expenses; adverse impact on people with disabilities, who perform work on the canteens under a subcontract; adverse impact on its own employees, most of whom are minorities; increased prices to the Government; and the risk of having only one source for a critical defense item in an emergency situation.

With respect to the current contractor, the Committee has determined that adding this canteen to the Procurement List will not have a serious adverse impact on that firm, even considering the impact of the Committee's recent addition of a similar item for which the firm is the current contractor. The firm has already recovered from the previous impacts on its business by the other mandatory source, which has advised the Committee that the firm will continue to have the opportunity to complete for the other type of work in which it is engaged.

In addition, the firm continues to have the opportunity to compete for canteen cap business, which involves some of the same equipment involved in furnishing the canteen proposed for addition. Even if the canteen were to remain available for competitive procurement, the firm could lose its investment in equipment and tooling because it is not guaranteed contracts in the competitive bidding system. Similarly, the individuals employed directly by the contractor and the persons with disabilities employed by the subcontractor are not assured of continued employment under the competitive procurement system and, in the case of the individuals with disabilities, there is no guarantee that even if the current contractor obtains future contracts that it will continue to employ them through subcontracts. Under the circumstances, the Committee has determined that the assurance of employment for blind persons associated with the addition of this item outweighs the possible future employment benefits for minorities and individuals with disabilities.

The Price to be paid by the Government for the canteens has been

determined by the Committee to be consistent with the intent of the JWOD Act and the Committee's pricing procedures. Both require a "fair market" price and not the "lowest possible" price. The Committee has also determined that the nonprofit agency proposed to supply the canteen has the capability to meet Government surge requirements.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The action will not have a serious economic impact on any contractors for the commodity listed.
- c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List: Canteen, Water (2-QT.); 8465-01-118-8173.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

*Beverly L. Milkman,  
Executive Director.*

[FR Doc. 91-15457 Filed 6-27-91; 8:45 am]  
BILLING CODE 6820-33-M

#### Procurement List Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On February 25, March 1 and May 10, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 7690, 8750 and 21664) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.
- c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following a commodity and services are hereby added to the Procurement List:

#### Commodity

Preventive Dentistry Kit, Patient, 6520-00-890-2080

#### Services

Commissary Shelf Stocking and Custodial, Fort Benning, Georgia  
Janitorial/Custodial, Fifth Floor Restrooms, The Pentagon, Washington, DC  
Janitorial/Grounds Maintenance, U.S. Army Reserve Center, Independence, Missouri

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

*Beverly L. Milkman,  
Executive Director.*

[FR Doc. 91-15453 Filed 6-27-91; 8:45 am]  
BILLING CODE 6520-33-M

#### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be provided by nonprofit agencies employing the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** July 29, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following services to the Procurement List:

Janitorial/Custodial, Naval Air Station, Whiting Field, Milton, Florida

Janitorial/Custodial, Marine Corps Logistics Base, Building 7501, Albany, Georgia

Janitorial/Custodial, U.S. Army Reserve Center, 4200 Michaud Blvd., New Orleans, Louisiana

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 91-15454 Filed 6-27-91; 8:45 am]

BILLING CODE 6820-33-M

#### Procurement List Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by a nonprofit agency employing the blind or other severely handicapped.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On April 12, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 14931) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service. The contractor stated that he did object to the addition of this service to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Commissary Shelf Stocking and Custodial, Fort Bliss, Texas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 91-15455 Filed 6-27-91; 8:45 am]

BILLING CODE 6820-33-M

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### Defense Policy Board Advisory Committee Task Force on Soviet Military

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The location of the Defense Policy Board Advisory Committee Task Force on Soviet Military meeting announced in the *Federal Register* on Friday, June 14, 1991 (56 FR 27502) has been changed to 1710 Goodridge Drive,

TI-7-2, McLean, Virginia. All other information remains the same.

Dated: June 24, 1991.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-15387 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-01-M

##### Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on July 15, 1991; from 8:30 a.m. to 4:30 p.m. on July 16, 1991, and from 8:30 to 4:30 p.m. on July 17, 1991. The meeting will be held at the Monterey Plaza hotel, 400 Cannery Row, Monterey, California 93940. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271, no later than July 8, 1991.

Dated: June 24, 1991.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-15388 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-01-M

##### Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

**ACTION:** Change in status from open to closed of advisory committee meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Weapon Development and Production Technology scheduled for 11 and 12 July, 1991, as published in the *Federal Register* (vol. 56, no. 115, page 27503, Friday, June 14, 1991, FR Doc. 91-14143) will be closed during the 12 July session.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of

Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. During the 12 July portion of the meeting the Task Force will receive classified briefings on the development and production of the Advanced Technology Fighter and on DARPA production process investments in support of "black" programs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that the 12 July session of the DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this session of the meeting will be closed to the public.

Dated: June 24, 1991.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-15389 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-01-M

#### Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 2, 1991; Tuesday, July 9, 1991; Tuesday, July 16, 1991; Tuesday, July 23, 1991; and Tuesday, July 30, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel

Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c) (2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b (c) (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: June 24, 1991.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-15390 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-01-M

#### Department of the Navy

##### CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet 16 July 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions for drafting final report of long range issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: June 19, 1991.

Wayne T. Baucino,

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 91-15383 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-AE-M

#### Department of the Navy

##### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Countermining Capabilities for Amphibious Operations (Phase II) will meet on July 10, 11, and 12, 1991. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on July 10, 11, and 12, 1991.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their review and update of the previous NRAC study on this subject, which was completed in 1989. This Panel will reexamine the issues raised, conclusions reached, and recommendations made by the previous Panel, and provide the Navy with reassessment of the findings in the light of Desert Shield/Storm, new knowledge of the threat and environment, and applicable advances in technology. The agenda will include briefings and discussions related to current operational capabilities and limitations; lessons learned from the Persian Gulf War related to the threat, minefield deployments, and operational plans; current U.S. Navy reactions; and promising emerging technology applicable to detection, neutralization, marking, and reporting in very shallow water, the surf zone, and on the beach. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that

the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief Of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: June 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve,  
Alternate Federal Register Liaison Officer.  
[FR Doc. 91-15381 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-AE-M

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Open Systems Architecture for Command, Control and Communications (C<sup>3</sup>) will meet on July 11 and 12, 1991. This meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on July 11 and 12, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings to the panel members to enable them to assess the ability of current Navy C<sup>3</sup> systems' architecture to support anticipated requirements, evaluate the performance of the present system relative to the existing threat, provide recommendations for an overall architecture to meet future needs, and provide recommendations concerning use of current and future commercial data communication systems for both interim and continuing satisfaction of Department of the Navy needs. The agenda will include briefings and discussions related to current C<sup>4</sup> Acquisition Policy, Standards, Guidelines, and Security Requirements; Copernicus Engineering; software technology research and development, amphibious over-the-horizon C<sup>3</sup> requirements and Desert Shield/Storm Lessons Learned; Navy ADA policy and implementation; Department of the

Army C<sup>2</sup>; university C<sup>3</sup>I research and development; the integrated tactical data network; and DARPA C<sup>3</sup> projects. These briefings and discussions will necessarily address current C<sup>3</sup> capabilities and limitations, emerging C<sup>3</sup> technologies and anticipated limitations, and respective susceptibility to penetration or denial. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: June 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve,  
Alternate Federal Register Liaison Officer.  
[FR Doc. 91-15382 Filed 6-27-91; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Indian Education National Advisory Council; Meeting

**AGENCY:** National Advisory Council on Indian Education.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE AND TIMES:** Monday, July 15, 1991, 8 a.m. to 2 p.m. (closed) and 2 p.m. until conclusion of business at approximately 5 p.m. (open).

**ADDRESSES:** Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024. Telephone: 202/479-4000.

**FOR FURTHER INFORMATION CONTACT:** John Cheek, Office Manager, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202-7556. Telephone: 202/732-1353.

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Council is authorized to appoint, without regard to the provisions of title 5 United States Code governing appointments in the competitive service, or otherwise obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions as prescribed by law. The Council is conducting a search to appoint a permanent Executive Director to serve as the chief staff member of the Council. The full Council will convene on July 15, 1991 for a partially closed meeting to interview candidates for the Executive Director position, and conduct general business of the Council.

The full Council will meet in closed session from 8 a.m. until approximately 2 p.m. on July 15, 1991, to conclude the Executive Director search process. The agenda for the closed portion of the meeting will consist of a discussion of the Search Committee's recommendations regarding the candidates and the questions and guidelines to be used in the interviews, actual interviews with candidates, and a discussion involving a final decision on the appointment of a permanent Executive Director for the Council.

Immediately following the closed search process, the full Council will meet in open session from 2 p.m. until 5 p.m. on July 15, 1991 for an informational business meeting. This portion of the meeting is open to the public and will include a presentation on America 2000, the President's education strategy, reports of the Chairman, a discussion of the content and format of the annual report to Congress, and a report on the current activities of the White House

Conference On Indian Education and the Indian Nations At Risk Task Force Study.

The closed portion of the meeting of the National Advisory Council on Indian Education will relate solely to the internal personnel rules and practices of an agency. Interviews with the candidates and discussions held in conjunction with the selection process will involve matters which relate solely to the internal personnel rules and practices of this Council and are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)).

A summary of activities of the closed portion of the meeting and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records shall be kept of all Council proceedings open to the public and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202-7556.

Dated: June 24, 1991. Signed at Washington, DC.

**Eddie L. Tullis,**

*Chairman, National Advisory Council on Indian Education.*

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 91-15464 Filed 6-27-91; 8:45 am]

BILLING CODE 4000-01-M

the purpose of organizing one workshop and participating in another workshop. The workshops will analyze how an institutional framework can be established for managing radioactive waste in a manner that ensures public trust and confidence. NAPA will commission several papers by leading management experts and provide a summary of its proceedings to DOE. The financial assistance award is sponsored by DOE's Secretary of Energy Advisory Board (SEAB).

**ELIGIBILITY:** Based on receipt of an unsolicited application, eligibility of this award is being limited to NAPA. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit. NAPA has unique chartered responsibility and has rendered advice on policy management issues across a range of government programs. NAPA's elected Fellows consist of more than 400 scholars and practitioners of diverse backgrounds in public administration whose practical experience comes from every level of government. The total estimated cost is \$69,996. The term of the award is from the date of award for 5 months.

**FOR FURTHER INFORMATION CONTACT:** Daniel Metlay, Task Force on Civilian Radioactive Waste Management, Secretary of Energy Advisory Board, 7B 198, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-3903.

Issued in Oak Ridge, TN on June 20, 1991.

**Robert Lynch,**

*Acting Director, Procurement & Contracts Division, Oak Ridge Operations.*

[FR Doc. 91-15488 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

waste in a manner that ensures public trust and confidence. The grantee will commission several papers by social scientists and organization theorists. The grantee will also organize and pay the expenses of some workshop participants to attend a second meeting that will involve participation of individuals selected by the National Academy of Public Administration. The grantee will provide Secretary of Energy Advisory Board (SEAB) with a summary of the proceedings.

**ELIGIBILITY:** Based on receipt of an unsolicited application, eligibility of this award is being limited to National Academy of Sciences. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit. NAS has a unique chartered responsibility and capability to reach consensus positions in the scientific community. This capability is recognized by the scientific community on a world-wide basis. The total estimated DOE cost is \$70,000. The term of the award is from the date of award for 5 months.

**FOR FURTHER INFORMATION CONTACT:** Daniel Metlay, Task Force on Civilian Radioactive Waste Management, Secretary of Energy Advisory Board, 7B 198, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-3903.

Issued in Oak Ridge, Tennessee on June 19, 1991.

**Peter D. Dayton,**

*Director, Procurement & Contracts Division, DOE Field Office, Oak Ridge.*

[FR Doc. 91-15489 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF ENERGY

### Determination of Noncompetitive Financial Assistance; National Academy of Public Administration

**AGENCY:** Department of Energy.

**ACTION:** Notice of financial assistance award.

**SUMMARY:** DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Financial Assistance Award No. DE-FG05-91ER35126 to the National Academy of Public Administration (NAPA).

**PROJECT SCOPE:** The funding for this financial assistance award will allow the grantee to form a Working Group on Radioactive Waste Management with

### Determination of Noncompetitive Financial Assistance; National Academy of Sciences

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Financial Assistance Award No. DE-FG05-91ER35127 to National Academy of Sciences.

**PROJECT SCOPE:** The funding for this financial assistance award will allow the grantee to organize a 2-day workshop on civilian radioactive waste management to analyze how an institutional framework can be established for managing radioactive

## Economic Regulatory Administration

### Final Consent Order With Eason Drilling Co. and ITT Corp.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Final action on proposed consent order.

**SUMMARY:** The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE and Eason Drilling Company (formerly Eason Oil Company) (Eason) and ITT Corporation (ITT), which was executed on May 3, 1991, and published for comment in 56 FR 22708 (May 16, 1991), shall be made final. The Consent Order resolves matters relating to Eason's compliance with the federal petroleum price and allocation regulations for the period November 1, 1973 through

December 31, 1979. To resolve these matters, ITT, on behalf of Eason, will pay to the DOE \$7,000,000 within 30 days from the effective date of the Consent Order. To distribute the settlement monies, the Economic Regulatory Administration (ERA) will petition DOE's Office of Hearings and Appeals (OHA) to implement Special Refund Procedures pursuant to 10 CFR part 205 subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, Department of Energy, room 3H-017, RG-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1699.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction
- II. Comment Received
- III. Analysis of Comment
- IV. Decision

**I. Introduction**

On May 16, 1991, DOE issued a notice announcing a proposed Consent Order between Eason and ITT and the DOE, which would resolve matters relating to Eason's compliance with the federal petroleum price and allocation regulations during the period November 1, 1973 through December 31, 1979. 56 FR 22708. Specifically, the May 16 Notice provided information regarding the potential overcharge liability arising from Eason's pricing of petroleum products at issue in a Remedial Order issued by OHA on December 6, 1990; and detailed the considerations which underlay ERA's preliminary view that the settlement is favorable to the government and in the public interest.

The Notice solicited written comments from the public relating to the terms and conditions of the proposed settlement and whether the settlement should be made final. ERA received one written comment, which was considered in making the decision whether to issue the proposed Consent Order as a final order.

**II. Comment Received**

The one comment received on the proposed Consent Order, submitted by the Controller of the State of California, addressed the failure of the Consent Order to specify the manner in which OHA will distribute the settlement monies in a subpart V proceeding. The Controller expressed concern that silence in this respect may suggest or permit a departure from DOE's Modified

Restitutionary Policy in Crude Oil Cases, issued in connection with the Final Settlement Agreement approved by the district court in *In Re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. See 51 FR 27899 (August 4, 1986).

**III. Analysis of Comment**

The Controller's comment relating to the distribution of the overcharge funds if the Eason Consent Order is finalized is not germane to the basis or adequacy of the settlement. Rather, as DOE previously explained in, *inter alia*, the Exxon Federal Register Notice, 51 FR 36052 (October 8, 1986), in response to similar comments, including one by the Controller, views regarding the disbursement of Consent Order monies are appropriately presented in the subpart V proceeding to be convened by OHA. Therefore, the lack of specificity in the Consent Order does not imply any departure from applicable DOE policy.

ERA's review and analysis of the comment received in response to the May 16 Notice did not provide any information that would support the modification or rejection of the proposed Consent Order. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

**IV. Decision**

By this Notice, and pursuant to 10 CFR 205.199], the proposed Consent Order is made a final Order of the Department of Energy, effective the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on June 21, 1991.

Milton C. Lorenz,

*Chief Counsel for Enforcement Litigation,  
Economic Regulatory Administration.*

[FR Doc. 91-15491 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

**Federal Energy Regulatory  
Commission**

[Docket Nos. ES91-39-000, et al.]

**The Detroit Edison Company, et al.;  
Electric Rate, Small Power Production,  
and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

**1. The Detroit Edison Company**

[Docket No. ES91-39-000]

June 20, 1991.

Take notice that on June 14, 1991, The Detroit Edison Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act

seeking authorization to issue from time to time, on or before September 30, 1993, in an aggregate principal amount not to exceed \$1.0 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

*Comment date:* July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

**2. PacifiCorp Electric Operations**

[Docket No. ER91-486-000]

June 20, 1991.

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on June 13, 1991, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, exhibit A (revision No. 2), exhibit C (revision No. 1) and exhibit D (revision No. 1) to Western Area Power Administration ("Western") Contract No. 87-LAO-298 ("Contract") dated July 17, 1987 with PacifiCorp (PacifiCorp's Rate Schedule FPC No. 45, Supplement No. 1 to Supplement No. 22). The revised exhibits A, C and D to the Contract represent changes due to completion of the Spence-Jim Bridger 230-kV transmission line. Exhibit A is a TOT 4A/4B Transfer Capability nomograph, exhibit C identifies transmission lines corresponding to TOT 4B power flow and Exhibit D lists transmission lines used in the development of the TOT 4A/4B nomograph of which parties to the Contract share pro rata reduction in TOT 4B transfer capability.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of April 12, 1991 be assigned to each of exhibits A, C, and D, these dates being consistent with the commercial operation date of the Spence-Jim Bridger 230 kV transmission line.

Copies of this filing were supplied to Western, the Public Service Commission of Wyoming and the Public Utility Commission of Oregon.

*Comment date:* July 5, 1991, in accordance with standard Paragraph E at the end of this notice.

**3. Minnesota Power & Light Company**

[Docket No. ER91-434-000]

June 20, 1991.

Take notice that on June 13, 1991, Minnesota Power & Light Company (Minnesota Power) tendered for filing a correction to a rate schedule for Firm Power Interchange Service provided by Minnesota Power to other members of the Mid-Continent Area Power Pool (MAPP), originally filed in this docket on

May 10, 1991. The correction changes the rate schedule designation of the MAPP Agreement, and includes as an attachment Minnesota Power's Order 84 adder which had been referenced in the rate schedule.

Minnesota Power requests waiver of the Commission's notice requirements and an effective date of May 1, 1991.

Copies of the filing have been served on MAPP, other members of MAPP, and on the state utility commissions in the MAPP region.

*Comment date:* July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Cleveland Electric Illuminating Company

[Docket No. ER90-588-001]

June 20, 1991.

Take notice that on June 4, 1991, Cleveland Electric Illuminating Company tendered for filing its compliance filing in this docket pursuant to the Commission's order issued May 2, 1991.

*Comment date:* July 5, 1991, in accordance with Standard Paragraph E at end of this notice.

#### 5. Southern California Edison Company

[Docket No. ER91-492-000]

June 20, 1991.

Take notice that on June 17, 1991, Southern California Edison Company (Edison) tendered for filing supplemental agreements to Edison Rate Schedules 247, 248, and 249:

Supplemental Agreement Between Southern California Edison Company and the City of Azusa for the Integration of the Idaho Power Sales Agreement (Azusa Agreement)

Supplemental Agreement Between Southern California Edison Company and the City of Banning for the Integration of the Idaho Power Sales Agreement (Banning Agreement)

Supplemental Agreement Between Southern California Edison Company and the City of Colton for the Integration of the Idaho Power Sales Agreement (Colton Agreement)

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Northwestern Public Service Company

[Docket No. ES91-40-000]

June 20, 1991.

Take notice that on June 17, 1991, Northwestern Public Service Company filed an application with the Federal

Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than \$25 million of short-term debt securities on or before August 1, 1993, with a final maturity date no later than August 1, 1994.

*Comment date:* July 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

#### 7. Pennsylvania Power & Light Company

[Docket No. ES91-466-000]

June 21, 1991.

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement ("Third Supplemental Agreement") ("Agreement"), dated January 28, 1988, as supplemented by a First Supplemental Agreement dated August 10, 1988, and further supplemented by a Second Supplemental Agreement dated May 31, 1989, between PP&L and Baltimore Gas and Electric Company (BG&E), which is on file with the Commission as PP&L's Rate Schedule FERC No. 92. The Third Supplemental Agreement provides for an increase in the Installed Capacity Rate contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement, which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91-339-000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

*Comment date:* July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Lake Cogen, Ltd.

[Docket No. QF91-170-000]

June 21, 1991.

On June 13, 1991, Lake Cogen, Ltd. of 215 East Madison Street, P.O. Box 2562, Tampa, Florida 33601-2562, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to the Golden Gem Growers, Inc. plant in Umatilla, Florida. The

facility will consist of two combustion turbine generators, two supplementary fired boilers heat recovery boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility, in the form of steam, will be used for citrus concentrate processing purposes. The net electric power production capacity of the facility will be 102 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in the last quarter of 1991.

*Comment date:* July 29, 1991 in accordance with Standard Paragraph E at the end of this notice.

#### 9. United States Department of Energy—Southeastern Power Administration

[Docket No. EF90-3011-001]

June 21, 1991.

Take notice that on May 31, 1991, the Deputy Secretary of Energy filed on behalf of the Southeastern Power Administration of the United States Department of Energy new Rate Schedule GAMF-3-A to recover unanticipated costs of purchasing pumping energy at the Carters Project. The Deputy Secretary, by order of May 24, 1991, approved the new rate schedule on an interim basis.

*Comment date:* July 8, 1991 in accordance with Standard Paragraph E at the end of this notice.

#### 10. Pasco Cogen, Ltd.

[Docket No. QF91-169-000]

June 21, 1991.

On June 13, 1991, Pasco Cogen, Ltd. of 215 East Madison Street, P.O. Box 2562, Tampa, Florida 33601, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration will be located adjacent to the Lykes Pasco plant located in Dade City, Florida. The facility will consist of two combustion turbine generators, two supplementary fired heat recovery boilers, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility, in the form of steam, will be used for citrus concentrate processing purposes. The net electric power production capacity of the facility will be 102 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in the last quarter of 1991.

*Comment date:* July 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

**11. York County Solid Waste and Refuse Authority**

[Docket No. QF88-920-002]

June 21, 1991.

On June 13, 1991, York County Solid Waste and Refuse Authority of 2653 Blackbridge Road, York, Pennsylvania 17402 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The Small Power Production Facility is located in Manchester Township, York County, Pennsylvania. The facility consist of three (3) boilers and a fully-condensing steam turbine generator set. The primary energy source is biomass in the form of municipal solid waste.

The original certification was issued on November 3, 1986 (37 FERC 62,100 (1986)). The instant recertification is requested due to an increase in capacity form 34.7 MW to 37 MW.

*Comment date:* July 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15394 Filed 6-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2298-000, et al.]

**ANR Pipeline Company, et al.; Natural gas certificate filings**

Take notice that the following filings have been made with the Commission:

**1. ANR Pipeline Company**

[Docket No. CP91-2298-000]

June 20, 1991.

Take notice that on June 18, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, MI 48243, filed in Docket No. CP91-2298-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc., a marketer, under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that, pursuant to an agreement dated June 7, 1990, under its Rate Schedule ITS, it proposes to transport up to 100,000 dt per day equivalent of natural gas. ANR indicates that it would transport 100,000 dt equivalent on an average day and 36,500,000 dt equivalent annually. ANR further indicates that the gas would be transported from Louisiana, Oklahoma, Kansas, Texas, Wisconsin, Offshore

Louisiana, and Offshore Texas, and would be redelivered in Michigan, Wisconsin, Indiana, Ohio, Illinois, Louisiana, Kansas, and Kentucky.

ANR advises that service under § 284.223(a) commenced April 24, 1991, as reported in Docket No. ST91-8764.

*Comment date:* August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

**2. Trunkline Gas Company**

[Docket Nos. CP91-2301-000, CP91-2302-000, CP91-2303-000, CP91-2304-000, CP91-2305-000, CP91-2306-000]

Take notice that on June 18, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, 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. CP86-586,000, 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.<sup>1</sup>

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 Trunkline and is summarized in the attached appendix.

*Comment date:* August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>1</sup> These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual Mcf	Receipt points <sup>1</sup>	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2301-000 (6-18-91)	Freeport-McMoran Oil & Gas Company (Marketer).	3,000 3,000 1,095,000	OLA.....	LA.....	6-8-90, PT, Interruptible.	ST91-8752-000, 5-1-91.
CP91-2302-000 (6-18-91)	Unifield Natural Gas Group (Marketer).	100,000 6,000 2,050,000	OLA, OTX, IL, LA, TN, TX.	IL.....	9-11-89, PT, Interruptible.	ST91-8760-000, 5-1-91.
CP91-2303-000 (6-18-91)	Tejas Power Corporation (Marketer).	100,000 50,000 18,250,000	OLA, OTX, IL, LA, TN, TX.	IL.....	9-7-89, PT, Interruptible.	ST91-8750-000, 5-1-91.
CP91-2304-000 (6-18-91)	Hadson Gas Systems, Inc. (Marketer).	100,000 100,000 36,500,000	OLA, OTX, LA, IL, TN, TX.	IL.....	12-17-90, PT, Interruptible.	ST91-8751-000, 5-1-91.
CP91-2305-000 (6-18-91)	Shell Gas Trading Company (Marketer).	100,000 100,000 36,500,000	OLA, OTX, LA, IL, IN, TN, TX.	OH.....	2-21-91, PT, Interruptible.	ST91-8755-000, 5-1-91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points <sup>1</sup>	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2306-000 (6-18-91)	V.H.C. Gas Systems, L.P. (Marketer).	200,000 200,000 73,000,000	OLA, OTX, LA, IL, TN, TX.	IL.....	2-14-90, PT, Interruptible.	ST91-8753-000, 5-1-91.

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**3. East Tennessee Natural Gas Company**

[Docket No. CP91-2284-000]

June 20, 1991.

Take notice that on June 14, 1991, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 12045, Knoxville, Tennessee 37919, filed a petition for declaratory order in Docket No. CP91-2284-000 requesting the removal of an uncertainty as to the meaning of the "on behalf of" standard under Section 311 of the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

East Tennessee, requests the Commission to clarify whether East Tennessee, consistent with the interim rule in Docket No. RM90-14-000, as a downstream transporter can transport gas under section 311 "on behalf of" upstream intrastate pipelines which are not connected to East Tennessee's system for delivery to end-users served directly off East Tennessee system. East Tennessee seeks a declaration as to whether the lack of a direct interconnection between itself and the

intrastate pipelines breaks a nexus which may be required by the interim rule in order for an interstate pipeline to transport gas under section 311 on behalf of the intrastate pipeline. East Tennessee notes that although the marketing of gas to specific end-users in downstream markets is beyond the typical function of upstream intrastate pipelines, East Tennessee also seeks a declaration as to whether it is authorized by the interim rule to transport gas under subpart B of part 284 of the Commission's Regulations for this type of marketing activity.

*Comment date:* July 11, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**4. Western Gas Interstate Company**

[Docket Nos. CP91-2274-000, CP91-2275-000, CP91-2276-000]

June 20, 1991.

Take notice that Western Gas Interstate Company, 9130 Jollyville Road, Suite 150, Austin, Texas 78759-7273, (Applicant) filed in the above-referenced dockets prior notice requests

pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-179-000, 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.<sup>2</sup>

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 Applicant and is summarized in the attached appendix.

*Comment date:* August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>2</sup> These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2274-000 (6-14-91)	Gas Company of New Mexico (LDC).	444 132 48,000	various .....	NM .....	2-28-91, FT-S, Firm.	ST91-7924, 3-1-91.
CP91-2275-000 (6-14-91)	Monfort, Inc. (End-User)	3,000 1,500 547,000	various .....	TX.....	3-27-91, IT-N, Interruptible.	ST91-8334, 4-1-91.
CP91-2276-000 (6-14-91)	Mercado Gas Services (Marketer).	10,000 2,000 730,000	various .....	TX, OK.....	2-28-91, IT-N, Interruptible.	ST91-8333, 3-23-91.

**5. Transwestern Pipeline Company**

[Docket Nos. CP91-2286-000, CP91-2287-000]

June 20, 1991.

Take notice that Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of

various shippers under its blanket certificate issued in Docket No. CP88-133-000, 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.<sup>3</sup>

Information applicable to each transaction, including the identity of the shipper, the type of transportation

<sup>3</sup> These prior notice requests are not consolidated.

service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points <sup>1</sup>	Delivery points	Contract date, rate, schedule, service type	Related docket, start up date
CP91-2286-000 (6-17-91)	Sunrise Energy Company (Marketer).	30,000 22,500 10,950,000	AZ, NM, OK, TX.....	OK.....	5-16-91, IT-1, Interruptible.	ST91-8940, 5-17-91.
CP91-2287-000 (6-17-91)	Enron Gas Marketing, Inc. (Marketer).	100,000 75,000 36,500,000	AZ, NM, OK, TX.....	OK, TX, NM.....	5-31-90, IT-1, Interruptible.	ST91-8941, 5-22-91.

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA and OTX.

#### 6. Florida Gas Transmission Company

[Docket No. CP91-2299-000]

June 20, 1991.

Take notice that on June 18, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP90-2299-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add an existing delivery point to its firm transportation service for Florida Power & Light Company (FPL), under FGT's blanket certificate issued in Docket Nos. RP89-50 *et al.*, all as more fully described in the request which is open to public inspection.

FGT proposes to add the new Martin North delivery point in Martin County, Florida, to its existing firm transportation service for FPL under FGT's FERC Rate Schedule FTS-1. FGT states that natural gas deliveries at the Martin North delivery point would be within the currently authorized maximum annual and daily transportation quantities. FGT also states that the Commission order issued May 21, 1991, in Docket No. RP91-133-000 granted it a limited waiver of the Commission's first-come, first-served policy and FGT's tariff, as necessary, to permit FPL to retain its existing place in FGT's first-come, first-served firm service queue while adding the Martin North delivery point to the firm transportation service agreement.

*Comment date:* August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

#### 7. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-2277-000]

June 21, 1991.

Take notice that on June 14, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-2277-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and conversion of abandoned field

production or exploratory wells to storage field wells, and the construction and operation of related minor facilities in AER's ADA, Chiles Dome and Ruston Storage Fields in Pontotoc, Coal and Hughes Counties, Oklahoma, and in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER requests authorization to acquire, over a ten-year period, up to 20 production or exploratory wells which have been, are being, or may be drilled by others within the existing boundaries of AER's Ada, Chiles Dome and Ruston Storage Field, to convert and operate any wells so acquired as observation or injection/withdrawal wells; to drill, complete and operate one additional injection/withdrawal well within the existing geographic boundaries and through the gas storage zone of AER's Ruston Storage Field; and to construct and operate, as necessary, related facilities to connect such wells to the existing storage field gathering systems in the Ada, Chiles Dome and Ruston Fields.

AER states that the geographic area in which the Ada, Chiles Dome, and Ruston Storage Fields are located has received renewed interest in terms of exploration and development of new natural gas reserves. It is stated that as a result, producers have drilled and are continuing to drill wells which penetrate the underground storage formations in efforts to tap deeper formations for the production of commercially producible quantities of natural gas. It is further stated that such wells can be abandoned at any time, either because they are dry holes or the available reserves become depleted. AER states that the conversion of some of these wells to injection/withdrawal or observation well status would be useful in conducting storage field operations or to monitor the integrity of AER's storage fields. AER states that an abandoned well which penetrates AER's storage reservoir and which is improperly completed could permit substantial migration and loss of stored gas, thereby increasing costs and AER's ability to serve its customers on peak days could

be threatened. AER maintains that only by acquiring abandoned wells can AER insure that its stored gas will be protected against such losses.

AER states that the requested authorization would permit it to acquire such wells as it may determine would be useful in conducting its storage operation at the time the wells are abandoned by producers. AER states that while the costs related to acquisition, conversion and attachment to its existing field gathering system of specific wells cannot be known at this time, total costs to be incurred will not exceed \$8,000,000. AER also states that it will not acquire more than 20 wells in total pursuant to the requested authorization. AER further states that it will file with the Commission annual reports similar to those described in § 157.215(b)(1) of the Commission's Regulations regarding underground storage testing and development.

In addition, AER requested authorization to drill, complete and operate a new injection/withdrawal well located at the Ruston Storage facility in Lincoln Parish, Louisiana, to increase the overall operating efficiency of the Ruston Storage Field by providing increased deliverability. AER estimates the cost of the new well and related facilities to be \$675,000, which will be financed from available funds and/or short-term borrowings.

*Comment date:* July 12, 1991, in accordance with Standard Paragraph F at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 the 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. 91-15395 Filed 6-27-91; 8:45 am]

BILLING CODE 6717-01-M

**Office of Fossil Energy**

[FE Docket No. 91-12-NG]

**Mobil Natural Gas Inc.; Blanket Authorization to Export Natural Gas**

**AGENCY:** Office of Fossil Energy, Energy.

**ACTION:** Notice of an order granting blanket authorization to export natural gas, including liquefied natural gas.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Mobil Natural Gas Inc. blanket authorization to export up to a total of 100 Bcf of natural gas over a two-year period beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

The docket room is open between the hour of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-15490 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

**Office of Hearings and Appeals**

**Cases Filed During the Week of May 31 Through June 7, 1991**

During the Week of May 31 through June 7, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

**LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS**

[Week of May 31 through June 7, 1991]

Date	Name and location of applicant	Case No.	Type of submission
5/31/91.....	Texaco/Paul's Texaco, Columbus, OH.....	RR321-67	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 9/20/90 Decision and Order (Case No. RF321-3164 & RF321-4485) issued to Paul's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/3/91.....	John M. Seehuus, Oak Ridge, TN.....	LFA 0129	Appeal of an Information Request Denial. If granted: The 5/24/91 Freedom of Information Request Denial issued by the Office of Placement and Administration would be rescinded, and John M. Seehuus would receive access to a copy of organizational conflict of interest letters for all subcontractors participating in contract number DE-OC01-90NE500429.
5/31/91.....	Texaco/Surfside Texaco, Palm Beach, FL.....	RR321-66	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 8/15/90 Decision and Order (Case No. RF321-4495 & RF321-8213) issued to Surfside Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/3/91.....	Gulf/Conner's Gulf Station, Rutledge, GA.....	RR300-90	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The 2/15/89 Decision and Order (Case No. RF300-3031) issued to Conner's Gulf Station would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 31 through June 7, 1991]

Date	Name and location of applicant	Case No.	Type of submission
6/3/91	Texaco/Bendel's Texaco, Cape Coral, FL	RR321-69	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 8/22/90 Decision and Order (Case No. RF321-3303 & RF321-8175) issued to Bendel's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/3/91	Texaco/Hiway Texaco, Wahpeton, ND	RR321-68	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 9/12/90 Decision and Order (Case No. RF321-1539 & RF321-6451) issued to Hiway Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/4/91	Texaco/Bill's Texaco, Daytona Beach, FL	RR321-70	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 8/10/90 Decision and Order (Case No. RF4267 & RF321-8043) issued to Bill's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/7/91	James L. Schwab, Spokane, WA	LFA-0130	Appeal of an Information Request Denial. If granted: The 5/24/91 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and James L. Schwab would receive access to all records between E. Wayne Adams and Carol Rossomondo regarding alleged whistleblower at the Tonopah Test Range.
6/7/91	Starks Shell Service, Washington, DC	LEF-0034	Implementation of Special Refund Procedures. If granted: The Office of Hearings & Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, for money obtained through a Consent Order entered into with Starks Shell Service.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
5/31/91 thru 6/7/91	Texaco refund applications received.	RF321-15526 thru RF 321-15711
5/31/91 thru 6/7/91	Crude Oil applications received.	RF272-89378 thru RF272-89390
5/31/91 thru 6/7/91	Tesoro Petroleum Corporation applications received.	RF326-292 thru RF 326-308
6/3/91	South Prairie Construction Co.	RF300-16948
6/3/91	William's Gulf	RF300-16949
6/3/91	Mrs. Montess Robinson.	RF300-16950
6/3/91	Danby's Service Stations.	RF300-16951
6/3/91	John E. Pizzino	RF300-16952
6/3/91	System Fuels Inc.	RF322-7
6/3/91	Sinclair Marketing Inc.	RF322-8
6/3/91	Arkwright Finishing.	RF336-8
6/3/91	Davis Mills Bldg.	RF336-9
6/3/91	Southern Hgts Christian Church.	RF335-15
6/3/91	Robert D. Houk	RF335-16
6/3/91	Ronald B. Lewis	RF335-17
6/3/91	Union Rock/Materials Co.	RF304-12301
6/3/91	Bride Co.	RF338-1
6/4/91	Texaco Refining & Mkt.	RF338-2
6/4/91	Marathon Oil Co.	RF322-9

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
6/4/91	Feather Petroleum Co.	RF330-29
6/4/91	Sid Hardwick	RF304-12302
6/5/91	Miller's Arco	RF304-12303
6/5/91	Crystal Oil Co	RF322-10
6/5/91	Reed & Barton	RF336-10
6/6/91	Tucker's Service Center.	RF300-16953
6/6/91	Essex Chemical Corp.	RF336-11
6/7/91	Max S. Phillips	RF335-18
6/7/91	Mary A. Ables	RF335-19
6/7/91	The Kiesel Co.	RF300-16954
6/7/91	Tuckers Gulf Service Station.	RF300-16955

[FR Doc. 91-15492 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

**Issuance of Decisions and Orders During the Week of April 29 Through May 3, 1991**

During the week of April 29 through May 3, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following

summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeal**

*IGR Enterprises, Inc., 5/2/91, LFA-0109*

IGR Enterprises, Inc. (IGR) filed an Appeal from a partial denial by the Authorizing Official of the DOE's Pittsburgh Energy Technology Center of a request for documents under the Freedom of Information Act (FOIA). The Authorizing Official had withheld certain portions of a technical proposal submitted by the Helipump Corporation in response to a program research and development announcement for Solid State Electrochemical Flue Gas Cleanup, PRDA RA22-90PC8902. The Authorizing Official justified the withholding on the ground that Helipump deemed the information to be privileged or confidential and, therefore, exempt from disclosure under Exemption b(4) of the FOIA. In considering the Appeal, the DOE found that the Authorizing Official had not adequately justified withholding the information. Therefore, the DOE remanded the matter so that the Authorizing Official could formulate an adequate determination.

**Refund Applications**

*Atlantic Richfield Company/Domex, Inc., 4/30/91, RF304-3420, et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed by Domex, Inc. (Domex) in the Atlantic Richfield Company special refund proceeding. The DOE had

previously granted refunds in three other Applications for Refund filed by Domex. All eleven applications were considered as a unit for purposes of calculating the correct presumption of injury and refund amount. As a result, Domex qualified for the 41% mid-level presumption of injury. Since the refunds previously granted were based on the full volumes claimed, the DOE reduced the volume for each of the eight remaining applications proportionately. The refunds granted in this decision totalled \$3,042, including \$952 in accrued interest.

*Drummond Co., Inc., 4/30/91, RF272-22373, RD272-22373*

The DOE issued a Decision and Order granting the Subpart V crude oil refund application of Drummond Co., Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a coal mining company, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. The DOE also determined that absorption oil, a product claimed by Drummond but not previously considered in the crude oil refund proceeding, was eligible for a refund. Accordingly, the DOE granted Drummond a refund of \$50,131. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier Subpart V crude oil Decisions, *See, e.g., Christian Haaland A/S, 17 DOE ¶ 85,439 (1988)*.

*Koppers Company, Inc., 5/1/91 RF272-10162, RD272-10162*

The DOE issued a Decision and Order granting the Subpart V crude oil refund application of Koppers Company, Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a diversified company, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore

presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. The DOE also determined that slurry oil, pentane, and ortho-xylene, products claimed by Koppers which had not previously been considered in the crude oil refund proceeding, were eligible for refunds. Another product, isobutylene, was found to be ineligible for refund. Accordingly, the DOE granted Koppers a refund of \$1,149,066. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier Subpart V crude oil Decisions. *See, e.g., Christian Haaland A/S, 17 DOE ¶ 85,439 (1988)*.

*Ligon Specialized Hauler, Inc., 4/30/91, RF272-75150, RF272-75150*

The DOE issued a Decision and Order denying an Application for Refund filed by Ligon Specialized Hauler, Inc. (LSH), in the Subpart V crude oil special refund proceeding. The DOE's denial was based on the fact that an LSH affiliate had applied for and had been granted a refund from the Surface Transporters Escrow and had, thereby, waived LSH's right to a refund in the crude oil proceeding. The DOE also dismissed as moot a Motion for Discovery filed by a consortium of States and two Territories of the United States.

*Murphy Oil Corporation/James N. Rogers, 5/2/90, RF309-854*

The DOE issued a Decision and Order denying an Application for Refund filed in the Murphy Oil Corporation (Murphy) special refund proceeding. The applicant based his purchase volume estimate solely on his memory. The applicant was not able to substantiate this estimate with his own records nor those of his petroleum supplier or Murphy. Accordingly, his application was denied.

*Shell Oil Company/Cesare's Shell, 5/3/91, RF315-10137*

The DOE issued a Supplemental Order rescinding the \$1,255 refund granted to Cesare's Shell in a January 29, 1991 Decision and Order, *Shell Oil Co./Veterans Petroleum Service, Inc., et al., Case Nos. RF315-1102 et al.* The refund was rescinded after the Decision and refund check were returned to the DOE which, after detailed searching, could not locate a proper address or

telephone number for Cesare's Shell or its contact person, Hollie Cesare.

*State of Delaware, 05/02/91, RF272-63433*

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the State of Delaware based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The State applied on behalf of all of its state agencies, public schools and for Delaware College and Delaware Technical College. The DOE rejected objections that were filed by Philip P. Kalodner, counsel for utilities, transporters and manufacturers. Delaware was granted a refund of \$141,807.

*Texaco Inc./Laurie Meadows Texaco, 4/30/91, RF321-14951*

The DOE issued a Decision and Order in which it required the recipient of a previously granted refund to remit a portion of that refund. In a July 30, 1990 Decision and Order in the Texaco Inc. refund proceeding, the DOE granted a refund to Laurie Meadows Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that he operated the retail outlet from June 1975 to February 1980, and the volume of purchases at that location between those dates. Subsequently, another applicant filed an application for a refund for the same retail location for the period ending September 1976. The second applicant submitted documentary evidence to support its claim. In addition, the owner of Laurie Meadows Texaco has now stated that the dates that he gave in his application were incorrect. Accordingly, the DOE found that he should repay, with interest, that portion of the refund attributable to purchases made through September 1976 and after December 1978.

*Texaco Inc./Stone & Cooper Fuel Co., 5/3/91, RF321-60372*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by William T. Johnson based on purchases made by Stone & Cooper Fuel Co. (S&C), a reseller of Texaco residual fuel oil during the consent order period. In his application, Mr. Johnson indicated that from 1952 until 1984 he was S&C's sole owner and shareholder. On July 31, 1984, S&C was sold by Mr. Johnson through a complete stock transfer. Although DOE generally finds that the seller of a corporation's stock relinquishes all rights to oil overcharge refunds, in this case, the DOE concluded

that a certain clause in the sales agreement between Mr. Johnson and the subsequent owners allowed Mr. Johnson to retain the right to receive any refund awarded to S&C in this proceeding. Accordingly, Mr. Johnson's application was approved, and he was granted a

refund of \$642, representing \$520 in principal and \$122 in interest.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications,

which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Frank's Tire & Arco Service et al.....	RF304-2493	04/29/91
Atlantic Richfield Co./General Motors Corporation et al.....	RF304-4334	05/01/91
Atlantic Richfield Co./Johnny's Arco et al.....	RF304-9349	04/30/91
Atlantic Richfield Co./Propane Power Corp./Modern Gas Service Corp. G.R.B., Inc.....	RF304-4933	04/30/91
	RF304-4976	
Commercial Carriers, Inc.....	RF272-73133	05/03/91
M&G Convoy, Inc.....	RF272-73134	
Fleet Carrier Corp.....	RF272-73135	
Convoy Company.....	RF272-73137	
Dow Chemical Co. (Midland, Michigan).....	RF272-67009	05/03/91
Dow Chemical Co. (Midland, Michigan).....	RD272-67009	
Dow Chemical Co. (Houston, Texas).....	RF272-69068	
Farmland Co-Op, Inc. et al.....	RF272-67794	05/01/91
Fort Pierce Utilities Authority.....	RF272-13182	05/01/91
Gulf Oil Corp./Angelles Gulf Service et al.....	RF300-11253	04/29/91
Gulf Oil Corp./Gottier Fuel Co., Inc., et al.....	RF300-12033	04/29/91
Gulf Oil Corp./Perhot's Gulf et al.....	RF300-11709	04/29/91
Gulf Oil Corp./Schaub Oil.....	RF300-5922	05/01/91
Leggett and Platt, Inc.....	RF272-360	04/30/91
Leggett and Platt, Inc.....	RD272-360	
Lehman-Roberts Company, Inc.....	RF272-11977	05/02/91
Lehman-Roberts Company, Inc.....	RD272-11977	
Metropolitan Dade County.....	RF272-72574	05/01/91
Opelika City School District et al.....	RF272-78808	05/03/91
Puerto Rico Marine Management, Inc.....	RF272-44657	05/01/91
Puerto Rico Marine Management, Inc.....	RD272-44657	
Ray Moore, Inc. et al.....	RF272-65836	05/03/91
Rosenbalm Aviation, Inc. et al.....	RF272-72217	05/03/91
S.D. Warren Company.....	RF272-24861	05/02/91
S.D. Warren Company.....	RD272-24861	
Scott Paper Company.....	RF272-64408	
Scott Paper Company.....	RD272-64408	
Shell Oil Company/Schust & Stasche Auto Service, Inc. et al.....	RF315-1069	05/01/91
State of Kansas.....	RF272-49898	05/01/91
Texaco Inc./Carolyn Park Texaco et al.....	RF321-6910	05/02/91
Texaco Inc./Continental Oil Co., Inc.....	RF321-6077	05/03/91
Texaco Inc./Dan's Mason Supply & Fuel Co., Inc. et al.....	RF321-6515	05/02/91
Texaco Inc./Doug's Texaco.....	RF321-8462	04/29/91
Doug's Tire Center.....	RF321-14568	
Texaco Inc./Ed Welborn Texaco et al.....	RF321-5548	04/30/91
Texaco Inc./Johnson & Son Texaco Service et al.....	RF321-3141	05/03/91
Texaco Inc./Leo E. Lee et al.....	RF321-1047	05/02/91
Wells Fargo Armored Service Corp.....	RF272-49244	05/01/91
Wells Fargo Armored Service Corp.....	RD272-49244	

**Dismissals**

The following submissions were dismissed:

Name	Case No.
ACME Gas & Oil.....	RF304-5928
Art's Texaco.....	RF321-3322
Bill's Texaco.....	RF321-3160
Biodgett Brothers Texaco.....	RF321-8226
Bcb's Arco.....	RF304-7299
Booth's Texaco.....	RF321-3568
Broadus Enterprises.....	RF300-12497
Capitol Texaco.....	RF321-7170
Cecil's Texaco.....	RF321-957
Charles R. Brown, Inc.....	RF321-5952
Chuck's Arco.....	RF304-4565
Church's Texaco.....	RF321-3443
Clemmon's Texaco.....	RF321-8689

Name	Case No.
Croote's Texaco.....	RF321-14331
Delgado Texaco.....	RF321-186
Denny's Texaco.....	RF321-190
E.G. Abbott LP Gas Co.....	RF321-7056
Ernie's Arco.....	RF304-7250
Frank's Texaco.....	RF321-3330
Frank's Texaco.....	RF321-9623
Griffin Butan Co.....	RF304-7025
Hebo Texaco.....	RF321-359
Ike's Texaco Service.....	RF321-9738
Jeff's Texaco.....	RF321-1093
Jones Oil Company.....	RF304-4316
King Currie Co., Inc.....	RF238-85
Lee's Texaco & Firestone.....	RF321-604
Lemmon Valley Arco.....	RF304-7141
Leon's Country Store.....	RF300-15973
Leroy's Texaco.....	RF321-614
Lewis & Clark County.....	RF272-43335

Name	Case No.
Lewis Texaco of Bakersfield.....	RF321-620
M&M Texaco.....	RF321-639
Mack's Gulf.....	RF300-12459
Manchester Auto Wash.....	RF304-7080
Marino's Arco Service.....	RF304-6847
Mizell Gulf.....	RF300-15912
Mona View Service.....	RF321-3158
Morris Arco Company.....	RF304-6471
Necanicum Truck Stop.....	RF321-400
Noda's Texaco Service.....	RF321-8003
Norby's Texaco.....	RF321-416
Rod's Texaco.....	RF321-3372
Rodriguez Texaco.....	RF321-3877
Rooney's Texaco.....	RF321-6146
S.C. Johnson & Son, Inc.....	RF272-70908
Salt Creek Country Store.....	RF321-468
Salt Creek Grocery.....	RF321-469
Schieff Service, Inc.....	RF304-7048

Name	Case No.
Scott Street Texaco.....	RF321-479
Shankies Texaco.....	RF321-485
South Wall Texaco.....	RF321-521
St. Louis Fuel & Supply, Inc.....	RF321-12522
Super Value, Inc.....	RF304-5000
Swift & Company.....	RF304-7051
Texaco on NW 50th Street.....	RF321-9045
Truit Pinson.....	RF321-4606
Unico, Inc.....	RF315-0979
Viator's Texaco Station.....	RF321-2887
Vic's Donato Texaco.....	RF321-3308
West Avenue Texaco.....	RF321-1493
Woodcock's Texaco.....	RF321-1291

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 21, 1991.

George B. Breznay,  
Director, Office of Hearings and Appeals.  
[FR Doc. 81-15493 Filed 6-27-91; 8:45 am]  
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3969-7]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 10, 1991 Through June 14, 1991, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

#### Draft EISs

ERP No. D-BLM-K67012-CA Rating EC2, Hayden Hill Open Pit Heap Leach Gold and Silver Mine Project, Construction and Operation, Mining Plan of Operations, Ancillary Right-of-Ways and Well Permits Approval, Lassen County, CA.

#### Summary

EPA expressed environmental concerns regarding potential impacts to

water quality and wetlands. EPA requested more information in the final EIS on existing air and water quality and wetland conditions, mitigation of water quality impacts, wetland and post-closure maintenance and monitoring procedures.

ERP No. D-COE-K36100-CA Rating 3, American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Implementation, Sacramento, Placer and Sutter Counties, CA.

#### Summary

EPA feels this document has inadequate information to fully evaluate potential environmental impacts; the Corps should revise and reissue the draft EIS. The draft EIS does not sufficiently assess the impacts of flood protection alternatives nor measures to minimize impacts to waters of the United States fisheries and wildlife. The draft EIS should address the combined impacts of temporary and permanent flood protection alternatives to determine the least pay environmentally damaging flood protection system. EPA seeks assurances that major operational changes, including conversion from a dry dam to a multipurpose dam be implemented only after Congressional approval and public review on an EIS addressing such changes.

ERP No. D-FHW-F40316-MN Rating EO2, MN-TH 14 Improvements, North Mankato-Mankato Bypass and County Road 193 to Smiths Mill, Funding and Section 404 Permit, City of Mankato, Blue Earth County, MN.

#### Summary

EPA expressed environmental objections based on impacts to the high quality wetlands and upland hardwoods associated with Alternatives B1 and B2, and recommended the preparation of a conceptual plan of mitigation for wetland impacts.

ERP No. D-UAF-F11019-IL Rating EC2, Scott Air Force Base Joint Military-Civilian Use, Civil Runway and Associated Airport Facilities Construction, Plan Approval, St. Clair County, IL.

#### Summary

EPA's concerns will be addressed when the additional information on feasible mitigation for significant noise impacts, wetlands impacts, and wetlands compensation are submitted.

#### Final EISs

ERP No. F-FAA-L51013-WA Bellingham International Airport Runway Extension, Construction and Operation, Airport Layout Plan,

Approval and Funding, Whatcom County, WA.

#### Summary

EPA expressed concerns with wetland impact and requested additional information on the avoidance and minimization of impacts to wetlands through the alternatives analysis.

ERP No. F-FHW-F40298-OH OH-297/ Whipple Avenue Improvement, US-30 Interchange at Raff Road/Whipple Avenue/OH-297 to I-77 Interchange at Everhard Road, Funding, Stark County, OH.

#### Summary

EPA has no objections to the project as presently described.

ERP No. F-FHW-J40066-ND Washington Street Corridor Improvements, Century Avenue to Bismarck Avenue, Funding, Bismarck, Burleigh County, ND.

#### Summary

Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-USN-L11012-WA Naval Station Puget Sound (NSPS) Sand Point Realignment to NSPS Everett, Implementation, City of Seattle, WA.

#### Summary

EPA feels this document has adequately addressed the identified adverse environmental consequence of Carbon Dioxide (CO) emission violations of State Implementation Plans (SIP) standards at identified intersections under the preferred alternative 2. Additionally, the final proposes an acceptable mitigation procedure to bring the project into compliance with SIP standards.

ERP No. FA-COE-L34003-OR Elk Creek Lake Project, Construction and Operation Implementation, Updated and Additional Information, Jackson County, OR.

#### Summary

EPA continues to have environmental concerns about the flood control "only/no pool" preferred alternative. The outstanding issue is the effect of dam completion on Elk Creek and Rogue River fisheries. New information indicates that many of the stocks of anadromous fish in the Rogue River and Elk Creek are depleted and are at risk of further decline. The final EIS proposes hatchery mitigation; however, recent studies indicate that hatchery fish can contribute to the decline of native stocks.

Dated: June 25, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-15499 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3969-6]

### Environmental Impact Statements

**Responsible Agency:** Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 17, 1991 Through June 21, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910204, Final EIS, AFS, ID West Moyie Decision Area Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, ID, Due: July 29, 1991, Contact: Mark A. Grant (208) 267-5561.

EIS No. 910205, Final EIS, COE, AR, Montgomery Point Lock and Dam Construction, McClellan-Kerr Arkansas River Navigation System, Implementation, Desha County, AR, Due: July 29, 1991, Contact: Bill Mathis (501) 324-5033.

EIS No. 910206, Draft EIS, SCS, NY, Beaver Brook Watershed Flood Control Plan, Funding and Implementation, Herkimer County, NY, Due: August 21, 1991, Contact: Paul A. Dodd (315) 423-5521.

EIS No. 910207, Draft EIS, AFS, AK, Kelp Bay Timber Harvest Project, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Baranof Islands, AK, Due: August 27, 1991, Contact: Janis S. Burns Buyarski (906) 747-4200.

EIS No. 910208, Final EIS, FHW, MI, Haggerty Road Connector Construction, I-96/I-696/ I-275 Interchange to Pontiac Trail, Funding and 404 Permit, Oakland County, MI, Due: July 29, 1991, Contact: Thomas A. Fort, Jr. (517) 377-1879.

EIS No. 910209, Final EIS, FHW, WI, US 18/151 Improvement, CTH-G to CTH-PD, City of Verona, Dane County, WI, Due: July 29, 1991, Contact: James L. Wenning (608) 264-5966.

EIS No. 910210, Final EIS, FHW, TN, TN-56 (Austin Peay) Bridge Approaches Replacement, Cumberland River, Funding, U.S. CCD Bridge Permit and Possible COE Section 404 Permit, Jackson County, TN, Due: July 29, 1991, Contact: Dennis C. Cook (615) 736-5394.

EIS No. 910211, Final EIS, AFS, MT, Lost Silver Timber Harvest Project, Timber

Sale and Road Construction, Implementation, Flathead National Forest, Horse Ranger District, Flathead County, MT, Due: August 12, 1991, Contact: Allen Christopherson (406) 387-5243.

EIS No. 910212, Final EIS, AFS, CO, Elkhead Creek/Slater Creek Vegetation Management Plan, Implementation, Routt National Forest, Bears Ears Ranger District, Routt County, CO, Due: July 29, 1991, Contact: J. Christopher Comstock (303) 824-9438.

EIS No. 910213, Final EIS, AFS, AK, Shelter Cove and George Inlet Areas Timber Sale, Implementation, Tongass National Forest, Ketchikan Ranger District, AK, Due: July 29, 1991, Contact: Steven T. Segovia (907) 225-2148.

### Amended Notices

EIS No. 910114, Regulatory Draft EIS, OSM, Revisions to the Permanent Program Regulations Implementing Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Addressing Valid Existing Rights (VER), Due: August 05, 1991, Contact: Andrew F. Devito (202) 343-5150.

Published FR 04-19-91—Review period extended.

Dated: June 25, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-15498 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3969-5]

### Class II Underground Injection Control Program Advisory Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** Advisory Committee meeting.

**SUMMARY:** The Class II Underground Injection Advisory Committee will meet on July 16 and 17 in Denver, Colorado.

**DATES:** On July 16, the meeting will begin at 11:30 a.m. and continue until completion. On July 17, the meeting will begin at 8 a.m. and end no later than 3 p.m.

**ADDRESSES:** The meeting will take place at the Embassy Suites Hotel, 1881 Curtis Street, Denver, Colorado, Telephone: 303-297-8888, Toll-Free Number: 1-800-362-2779.

**FOR FURTHER INFORMATION CONTACT:** If you need further information on substantive issues, please contact Jeffrey Smith, EPA, Office of Water, at (202) 382-5586. If you need information on administrative matters, please

contact Angela Suber, EPA, Regulatory Development Branch, at (202) 382-7205, or John Lingelbach, Committee Co-Chair, at (202) 887-1037.

Dated: June 25, 1991.

Charles Kirtz,

UIC Advisory Committee Designated Federal Official.

[FR Doc. 91-15473 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59300; FRL 3933-7]

### Toxic and Hazardous Substances; Test Market Exemption Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 3 applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

#### DATES:

*Written comments by:*

T 91-21, 91-22, June 28, 1991.

T 91-23, June 30, 1991.

**ADDRESSES:** Written comments, identified by the document control number "(OPTS-59300)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW, Rm. L-100, Washington, DC 20460, (202) 382-3532.

#### FOR FURTHER INFORMATION CONTACT:

David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received

by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**T 91-21**

*Close of Review Period.* July 12, 1991.  
*Manufacturer.* Confidential.

*Chemical.* (G) Complex tall oil polyalkylene polyamide, alkali metal salt.

*Use/Production.* (G) Set accelerator for asphalt emulsions. Prod. range: Confidential.

**T 91-22**

*Close of Review Period.* July 12, 1991.  
*Manufacturer.* Confidential.

*Chemical.* (G) Complex tall oil polyalkylene polyamide, alkali metal salt.

*Use/Production.* (G) Set accelerator for asphalt emulsions. Prod. range: Confidential.

**T 91-23**

*Close of Review Period.* July 14, 1991.  
*Manufacturer.* Albright & Wilson American.

*Chemical.* (G) Neutral phosphonate ester.

*Use/Production.* (G) Redfactory patching additive. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 500 mg/kg species (rat). Acute dermal toxicity: LD50 > 1,000 mg/kg species (rabbit). Eye irritation: strong species (rabbit). Skin irritation: negligible species (rabbit).

Dated: June 24, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-15475 Filed 6-27-91 8:45 am]

BILLING CODE 6580-50-F

**[FRL-3969-1]**

**Extension of the Period for Action on a Proposed Determination To Withdraw or Restrict the Specification of an Area for Use as a Disposal Site; Kuparuk River Unit, North Slope Borough, AK**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of an extension of the period for Regional action on a proposed section 404(c) determination.

**SUMMARY:** On May 14, 1991, EPA Region X published notice in the **Federal Register** of a Proposed Determination pursuant to section 404(c) of the Clean

Water Act (33 U.S.C. 1344(c)). EPA Region X also retained a consultant to analyze the hydrologic characteristics of the site. The regulation at 40 CFR 231.5 stipulates that EPA Region X should prepare a finding on the Proposed Determination within fifteen days of the close of the public comment period (by June 28, 1991). However, in order to provide sufficient time to fully review the substantive information contained in the administrative record, submitted during the public comment period and prepared by its consultant, EPA Region X hereby extends that time period until August 13, 1991, as authorized by 40 CFR 231.8. This brief extension will not substantially delay a final EPA decision on this matter.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Burd, Director, Water Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Dated: June 21, 1991.

Robert S. Burd,

Director, Water Division.

[FR Doc. 91-15474 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

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**FEDERAL DEPOSIT INSURANCE CORPORATION**
**Information Collection Submitted to OMB for Review**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

*Type of Review:* Extension of the expiration date of a currently approved collection without any charge in the substance or method of collection.

*Title:* Application for Consent to Exercise Trust Powers.

*Form Number:* 6200/09, 6200/09A.

*OMB Number:* 3064-0025.

*Expiration Date of OMB Clearance:* August 31, 1991.

*Frequency of Response:* On occasion.

*Respondents:* Insured State nonmember banks wishing to exercise trust powers.

*Number of Respondents:* 50.

*Number of Responses per Respondent:* 1.

*Total Annual Responses:* 50.

*Average Number of Hours per Response:* 15.69.

*Total Annual Burden Hours:* 785.

*OMB Reviewer:* Gary Waxman, (202) 395-7340, Office Management and Budget, Paperwork Reduction Project (3064-0010), Washington, DC 20503.

*FDIC Contact:* Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted before August 27, 1991.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed above.

Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:**

Insured State nonmember banks must submit applications to the FDIC for consent to exercise trust powers. Applications are evaluated by the FDIC to verify the qualifications of bank management to administer a trust department, and to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

Dated: June 24, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-15426 Filed 6-27-91; 8:45 am]

BILLING CODE 6714-01-M

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**
**Agency Information Collection Submitted to the Office of Management and Budget for Clearance**

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Type:* Extension of 3067-0180.

*Title:* Civil Rights Higher Education and Rehabilitation Act Survey.

*Abstract:* FEMA form 14-5, Civil Rights—Higher Education and Rehabilitation Act Survey, is required to annually evaluate each State emergency

management agency's compliance with nondiscrimination regulations. The survey is administered by FEMA program personnel to State and territorial governments receiving Federal financial assistance from FEMA through the Comprehensive Cooperative Agreement. Areas covered in the survey include administrative procedure, training, construction, and planning. The results of the survey will be used to provide technical assistance to accomplish voluntary compliance and will be a basis for budgetary recommendations to the Director, FEMA.

*Type of respondents:* State and local governments.

*Estimate of total annual reporting and recordkeeping burden:* 138 hours.

*Number of respondents:* 55.

*Estimated average burden hours per response:* 1.5 hours to complete the survey, and 1 hour for recordkeeping burden.

*Frequency of response:* Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Office, Linda Borrer (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: June 21, 1991.

Gail L. Kercheval,

*Acting Director Office of Administrative Support.*

[FR Doc. 91-15442 Filed 6-27-91; 8:45 am]

BILLING CODE 6718-01-M

### Arkansas; Amendment to Notice of a Major Disaster Declaration

[FEMA-907-DR]

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Arkansas (FEMA-907-DR), dated May 30, 1991, and related determinations.

**DATED:** June 12, 1991.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Arkansas, dated May 30, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 30, 1991:

The counties of Fulton, Lafayette, Scott, and Van Buren for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 91-15440 Filed 6-27-91; 8:45 am]

BILLING CODE 6718-02-M

### Mississippi; Amendment to Notice of a Major Disaster Declaration

[FEMA-906-DR]

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

**DATED:** June 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Mississippi dated May 17, 1991, is hereby amended to add Public Assistance and include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Chickasaw, Hancock, and Oktibbeha for Individual Assistance and Public Assistance; and

The counties of Carroll, Clay, George, Grenada, Holmes, Issaquena, Marshall, Sharkey, Tate, Warren, Yalobusha, and Yazoo for Public Assistance (already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 91-15439 Filed 6-27-91; 8:45 am]

BILLING CODE 6718-02-M

### Nebraska; Amendment to Notice of a Major Disaster Declaration

[FEMA-908-DR]

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska (FEMA-908-DR), dated May 28, 1991, and related determinations.

**DATED:** June 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Nebraska, dated May 28, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 28, 1991:

The counties of Colfax, Dodge, Madison, and Stanton for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 91-15441 Filed 6-27-91; 8:45 am]

BILLING CODE 6718-02-M

### FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

#### Appraisal Subcommittee; Extension of Deadline for Use of Certified or Licensed Appraisers in Federally Related Transactions

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice extending effective date For American Samoa ("AS") and the Commonwealth of the Northern Mariana Islands ("CNMI").

**SUMMARY:** Notice is hereby given that the Appraisal Subcommittee ["ASC"], with the approval of the Federal Financial Institutions Examination Council ["FFIEC"], ordered the extension until December 31, 1991, of the effective date for the use of certified or licensed appraisers for all appraisals performed in connection with federally related transactions under title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989

["FIRREA"]<sup>1</sup> in AS and CNMI. This extension is now effective in 56 of the ASC's 57 jurisdictions.

**DATES:** This action is effective on June 28, 1991.

**ADDRESSES:** Copies of this notice are available upon request to the Appraisal Subcommittee, Federal Financial Institutions Examination Council, 1776 G Street, NW., suite 850B, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel to the Appraisal Subcommittee, at the address given above; telephone (202) 357-0133.

**SUPPLEMENTARY INFORMATION:** Title XI of FIRREA provides for the adoption and implementation by the various States of standards and procedures for the certification and licensing of appraisers. The ASC is required to monitor these State appraiser certification and licensing programs. Federally regulated depository institutions are to use these appraisers in federally related real estate transactions. However, the ASC is authorized in section 1119(a)(2) (12 U.S.C. 3348(a)(2)) to extend from July 1, 1991, to December 31, 1991, the effective date for using certified or licensed appraisers in connection with federally related transactions. That authority is premised upon "a written finding that a State has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this title."

Since enactment of FIRREA, the ASC has closely monitored the development of appraiser qualification standards in the various States and other jurisdictions subject to title XI. This effort has included the careful review of State legislative and regulatory proposals designed to implement title XI's requirements, as well as the providing of comments, suggestions, guidance and direction in this regard, both general and specific, oral and written. On May 1, 1991, the ASC found that each State, the District of Columbia, Puerto Rico, Guam and the Virgin Islands qualified for the December 31, 1991 extension. See 56 FR 20002 (May 1, 1991). AS, CNMI and Palau did not qualify for an extension at that time.

The ASC hereby finds that AS and CNMI have made substantial progress toward establishing an appraiser certification and licensing system in conformity with title XI. Statutes have been or are being enacted as required by

title XI.<sup>2</sup> The ASC commends these jurisdictions and encourages each to implement its system before the end of the extension period. Moreover, the ASC encourages lenders to use appraisers certified or licensed by these systems as soon as possible.

The ASC further finds that such an extension facilitates Congress's intention to implement title XI's new regulatory scheme with minimal disruption and confusion at the state and Federal levels. The ASC recognizes that less than two years have passed since title XI was adopted on August 9, 1989, and while the States and other jurisdictions have made significant progress, they have had relatively little time to create from scratch an appraiser licensing and certification system. Many tasks are involved in that effort, including an analysis and determination of title XI's requirements, proposing and adopting legislation, creating valid testing and qualification standards, establishing agencies to administer the various aspects of the regulatory program, and coordinating these and other tasks with the ASC, other Federal agencies and entities, and various industry groups. By extending title XI's effective date for use of certified and licensed appraisers in federally related transactions until December 31, 1991, the ASC fully anticipates that, on January 1, 1992, all aspects of a nationwide, comprehensive and uniform real estate appraiser regulatory system will be in place, as contemplated by Congress when it adopted title XI.

For these reasons, the ASC, with the approval of the FFIEC, hereby extends to December 31, 1991, the deadline for use of certified or licensed appraisers in federally related transactions, pursuant to its authority in section 1119(a)(2) of FIRREA (12 U.S.C. 3348(a)(2)), in AS and CNMI.<sup>3</sup>

By order of the ASC, with the approval of the FFIEC.

Dated at Washington, DC this 24th day of June, 1991.

Fred D. Finke,

*Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council.*

[FR Doc. 91-15369 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-M

<sup>2</sup> The ASC requests that all States and other jurisdictions continue to facilitate the orderly implementation of the Title XI regulatory program by promptly forwarding to the ASC staff all pertinent proposed and enacted legislation and rules and regulations.

<sup>3</sup> The ASC still has not received any formal communications from Palau. Therefore, the ASC at this time has no basis to extend the effective date from July 1, 1991, for Palau.

## FEDERAL RESERVE SYSTEM

### Edgemark Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1991.

**A. Federal Reserve Bank of Chicago**  
(David S. Epstein, Vice President) 230  
South LaSalle Street, Chicago, Illinois  
60690:

1. *Edgemark Financial Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, *Edgemark Mortgage Corporation*, Downers Grove, Illinois, in originating, acquiring, selling and servicing residential mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

<sup>1</sup> Public Law No. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3310, 3331-3351.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-15408 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

### Honor Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1991.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Honor Bancorp, Inc.*, Honor, Michigan; to acquire Honor Consultive Services, Inc., Lake Orion, Michigan, and thereby engage in providing management consulting services to

nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the Midwest United States.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-15409 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

### Saul Kaplan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 1991.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Saul Kaplan*, Scranton, Pennsylvania; to acquire 30.97 percent of the voting shares of Upper Valley Bancorp, Inc., Olyphant, Pennsylvania, and thereby indirectly acquire The National Bank of Olyphant, Olyphant, Pennsylvania.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joseph M. Henry*, Natchitoches, Louisiana; and *Juanita B. Henry*, Natchitoches, Louisiana; to each acquire 41.63 percent of the voting shares of Exchange Bancshares, Inc., Natchitoches, Louisiana, and thereby indirectly acquire Exchange Bank & Trust, Natchitoches, Louisiana.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-15410 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

### Liberty National Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1991.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Investment Services, Inc., Louisville, Kentucky, in providing investment advisory services to both institutional and retail customers pursuant to § 225.25(b)(4); and providing financial advice to municipal securities issuers as incidental to its underwriting and dealing activities, or as a separate service offered to municipal securities issuers performed on a contract basis for a negotiated fee (See, e.g., *Norwest Corp.*, 76 Federal Reserve Bulletin 79

(1990)). These activities will be conducted in Kentucky and Indiana.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-15411 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

**Swatara Bancorp, Inc., et al.;  
Formations of; Acquisitions by; and  
Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1991.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Swatara Bancorp, Inc.*, Jonestown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Jonestown Bank and Trust Company, Jonestown, Pennsylvania.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Iowa State Shares, Inc.*, Albia, Iowa; to become a bank holding company by acquiring 94.75 percent of the voting shares of First Iowa State Bank, Albia, Iowa.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Coalwell Bancorporation*, Ogema, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Ogema State Bank, Ogema, Minnesota.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bushton Investment Company, Inc.*, Hays, Kansas; to acquire 100 percent of the voting shares of The Bank of Inman, Inman, Kansas.

2. *1st Premier Bancorp*, Golden, Colorado; to become a bank holding company by acquiring 90 percent of the voting shares of Denver West Bank and Trust, Golden, Colorado.

3. *MidAmerican Corporation*, Prairie Village, Kansas; to merge with Kaw Valley Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Kaw Valley Bank, Overland Park, Kansas.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-15412 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**

**Office of the Assistant Secretary for  
Planning and Evaluation**

**Community-based Service Integration  
Projects: Announcement of the  
Availability of Funds and Request for  
Proposals**

**AGENCY:** Office of the Assistant Secretary for Planning and Evaluation, DHHS.

**ACTION:** Announcement of the availability of funds and request for proposals to establish a Resource Center for Community-based Service Integration Efforts and to facilitate local community projects.

**SUMMARY:** Research and program administration experience strongly indicate that the needs of individuals and families living in poverty or facing demands for long-term support are complex and often pervasive. Families with family members at-risk most often have interconnected and interdependent residential, medical, educational, nutritional, emotional, social and recreational service needs, and progress on one or more of these fronts is often seriously compromised or blocked outright by the inability of such families to gain access to all of the needed

services in a coordinated and continuous fashion.

States and localities are struggling with approaches to integrate health and human services for low-income families as a means of improving the access to and effectiveness of these needed services. This grant announcement announces the availability of funds to support (1) a National Service Integration Resource Center, and (2) planning grants to three to six facilitators who are currently working with clusters of urban or rural communities who have already made a commitment to undertaking systemic change to improve access to a wide array of services to address the increasingly multiple needs of young children and their families living in poverty. These efforts are intended to assist states and localities in their service integration efforts.

Pursuant to section 1110 of the Social Security Act (as specifically authorized by the United States Congress), the Assistant Secretary for Planning and Evaluation is seeking applications to conduct two separate, but related, pieces of work as described in part II. and III. of this announcement.

Applicants may apply for one or both grants (see part IV. Application Procedures). Applications will be accepted from public organizations (including institutions of higher education); from private non-profit organizations; and from for-profit organizations.

This publication combines these two grant announcements for administrative purposes; however, applicants should understand that the funding, period of performance, and evaluation criteria differ between the two projects (see parts II. and III.). Potential applicants may apply for one or both grants as described in parts II. and III.

**DATES:** The closing date for submittal of applications under this announcement is August 19, 1991.

**FOR APPLICATION KITS OR FURTHER**

**INFORMATION CONTACT:** Grants Officer, DHHS/ASPE, Hubert H. Humphrey Bldg., room 426F, 200 Independence Ave., SW., Washington, DC 20201, (202) 245-1794.

**SUPPLEMENTARY INFORMATION:**

**Part I. Background**

*A. Current Problems in the Planning and Delivery of Services*

Research and program administration experience strongly indicate that the needs of individuals and families living in poverty or facing demands for long-term support are complex and often

pervasive. Families with family members at-risk most often have interconnected and interdependent residential, medical, educational, nutritional, emotional, social and recreational service needs, and progress on one or more of these fronts is often seriously compromised or blocked outright by the inability of such families to gain access to all of the needed services in a coordinated and continuous fashion.

Federal agencies currently administer several hundred categorical programs that provide benefits and/or services to individuals and families. The long-term goals underlying most of these programs seek to maximize the opportunities and choices realistically available to participating individuals and families in three major areas: (1) Personal autonomy and independence, (2) social integration, participation and interdependence, and (3) economic productivity and self-sufficiency. Viewed as a whole, the day-to-day operation of Federal categorical programs reveals several types of service integration problems which have adverse effects on large numbers of individuals and families seeking access to needed services:

(1) Individuals and families are unable to access needed services and benefits which are, in fact, available within the community because of the *absence of a single point of access at the community level* to the range of needed services.

(2) Often, usually as a result of the rigid categorical nature of programs and funding streams and of the failure to involve families directly in defining service needs and priorities, *families needs are not approached holistically and a family-centered service continuum is not created within the community.*

(3) Disjointed and uncoordinated service planning among community agencies and the impact of *incompatible program structures and procedures*, (e.g., geographic location, service hours, assumed literacy) are serious impediments to needed services and benefits, and fragmentation of roles within the helping professions.

(4) Individuals and families are influenced or discouraged from seeking needed services and benefits as a result of *conflicting goals, eligibility criteria and administrative procedures* both within and among programs.

(5) Disincentives inherent in the design of some categorical programs actively discourage or penalize efforts by individuals and families to assume personal responsibility, often through termination of needed services or benefits.

(6) Services and benefits needed by individual and families are delayed or inappropriately interrupted or terminated as a result of the fragmentation of agency responsibility for service planning and provision and the absence of a single point of "accountability" across the various systems.

(7) Information on successful strategies for helping individuals and families become and remain economically and socially self-sufficient is relatively undeveloped, has little theoretical basis, and is often based on weak evidence.

#### B. Service Integration Strategies

*Service integration* is a strategy for removing these barriers to effective service planning and delivery which combine to frustrate the opportunity of individuals and families to obtain effective support (in the form of employment, income support, medical insurance, services and volunteer assistance) to exercise choice and control in pursuing the maximum range of opportunities in each of these areas. As seen from the perspective of the individual or family, the current program structures are a complex web of agencies and professionals with specific roles and missions which must be navigated successfully if any help is to be obtained. Even sophisticated clients and experienced professionals may find it difficult to determine which agency has responsibility or the expertise to respond to a particular client's needs. Thus service integration seeks to create an environment that addresses the comprehensive needs of the client in a holistic way and addresses problems of improper sequencing of services, conflicting treatment goals and methodologies, conflicting eligibility requirements, etc.

From the perspective of agency administrators and political leaders, the development and use of service integration strategies offer the potential for more efficient and effective use of scarce resources, particularly when the Federal and/or State sources of funding

persons or problems. In addition, service integration strategies may also reduce duplicative administrative overhead and permit improvements in the ability of state and local jurisdictions to respond to the growing demands of political leaders for greater accountability and measurable outcomes.

A variety of attempts have been made to define operationally what is meant by service integration. The operational definition arrived at as the result of an

earlier exhaustive study of the subject conducted by the Department is:

Services Integration refers primarily to ways of organizing the delivery of services to people at the local level. Services integration is not a new program to be superimposed \* \* \* rather, it is a process aimed at developing an integrated framework \* \* \* Its objectives must include such things as (a) the coordinated delivery of services for the greatest benefit to people; (b) a holistic approach to the individual and the family unit; (c) the provision of a comprehensive range of services locally; and (d) the rational allocation of resources at the local level so as to be responsive to local needs. (Secretary Elliot Richardson, June 1, 1971.)

Four years later, in undertaking a national survey of service integration projects, the Rand Corporation proposed a simpler definition:

An innovative organizational effort to coordinate or consolidate human service activities at the local level in traditional agencies as a means of enhancing the effectiveness, efficiency, and/or continuity of comprehensive service delivery. (The 1975 Census of Local Services Integration, William Lucas, et al. December, 1975.)

There has been a long tradition of local institutional reform efforts within the field of health and human services which meet these definitions and many attempts to redesign the delivery of health and human services at the local level. The scope of these efforts range from major agency reorganizations and/or consolidations to community planning efforts sponsored by local United Way organizations or private foundations. Federally sponsored efforts to improve the delivery of health and human services through greater coordination and planning date back to the mid-1960s. The efforts of Department of Health and Human Services to promote services integration have their origin in the statement by Secretary Richardson in 1971 quoted above.

Between 1971 and 1975 some 35 demonstration projects and 10 technical studies were funded under the title Services Integration Targets of Opportunity (SITO). The projects had a very wide range of goals and outcomes and were independent free-standing efforts. Between 1974 and 1977 the Department funded some 79 demonstration projects under the title of Partnership Grants Program. This program of short-term discretionary grants was intended to improve the capacity of state and local governments to plan and manage their social service programs. In addition, at this time five local governments were funded to develop their own "Comprehensive Human Service Planning and Delivery

System' that was focused both on improving services to clients and on improving accountability and rational allocation of resources mechanisms. In 1985 grants were made for Service Integration Pilot Projects (SIPP) in five states. A variety of service programs, populations, and levels of effort were represented in the projects.

### C. Context of This Effort

Most recently in 1990, President Bush created the White House Economic Empowerment Task Force which, in turn, established a Service Integration Work Group. In contrast with early efforts aimed at service integration which were focused almost exclusively at the administrative process (e.g., improved government administration), current efforts reflect a new and important focus on both the outcome of service integration activities (e.g., employment, improved learning, better health) and on the dynamic, personal involvement of clients and beneficiaries in the process, itself. From the standpoint of this group, both the process and the outcomes of service integration activities should serve to increase "choice and control" by individuals and families over an expanded range of economic and social opportunities.

This new emphasis on personal responsibility and choice necessarily redirects the emphasis of service integration from caretaking to enabling. In practice, this change of emphasis requires increased attention within the service integration context to (1) the presence of a wide array of social and economic opportunities within the community, (2) support of an active and competitive market of services within the local community to assist individuals pursuing such opportunities, (3) the availability of complete and accurate information concerning both opportunities and related services within the community, and (4) access to sufficient, resources, both human and financial, for basic support and to choose (purchase) services needed to pursue opportunities. In sum, individuals and families must be able to obtain the knowledge, resources, and realistic options necessary to attain personal autonomy, social integration, and economic self-sufficiency without the need for the direct and ongoing intervention of government.

In recognition of the increasing problems families face and of the importance of supporting families, the Secretary of DHHS has identified many goals for HHS, including:

- Strengthening the family,

- Improving access to cost-effective health and human services for all Americans,

- Maximizing the opportunity for every American to participate fully in the national economy and the social mainstream.

- Making communities places where children can learn.

Based on these and other goals, the Secretary has delineated nine program directions to focus current and future policy and program development. Three of the Program Directions directly relevant to this announcement are:

*Program Direction #5:* Improve access of youth living in low-income families to needed support services, including employment training other transition to work services and adolescent pregnancy-related services;

*Program Direction #6:* Improve the integration, coordination, and continuity of various HHS-funded services potentially available to families currently living in poverty; and

*Program Direction #8:* Improve the access of young children and their families living in poverty to a wide array of developmental, support services and income assistance, including nutrition, foster care, health, mental health, social and child protective services.

This grant announcement supports the Secretary's goals and Program Directions, as it is aimed at assisting states and localities in their service integration efforts.

### D. Current Developments

There is widespread dissatisfaction with the current fragmentation of services. As a result, efforts are underway in many communities to overcome the barriers to providing effective and accessible services. There are many different configurations of services operated under a variety of financial, organizational and political sponsorships. For example, we are aware of social and health services being organized around elementary schools, public housing projects, community health centers, and family resource centers. These are not usually systematic efforts built upon an idealized model of a delivery system, but rather creative and pragmatic responses to the needs of families and children within the constraints of the local community's resources. The purpose of these grants is to support and encourage these local efforts and thereby promote eventual changes in the systems themselves.

## Part II. Resource Center for Community-Based Service Integration

### A. Purposes

The Resource Center is intended to facilitate the collection and dissemination of information on attempts by Federal, State, and local organizations to redesign and integrate the delivery of a variety of health and human services, to advance the state of knowledge regarding service integration, and to facilitate the development of local initiatives for systemic change by providing technical assistance and linkages to others involved in similar efforts.

### B. Core Functions

The Resource Center must carry out the following major functions: (1) Summarize and contribute to the state of knowledge by reviewing past efforts and synthesizing the lessons which have been learned, (2) provide accurate, practical, and timely information by acting as a clearinghouse for information about past, current, and planned community efforts directed at creating integrated health and human services delivery systems, (3) provide technical assistance in the development and operation of integrated service delivery systems, and (4) foster the development of local service integration efforts by periodically convening and assisting with the formation of a network of leaders and advocates of systemic change in the delivery of services at the local level.

### C. Contents of the Program Narrative

In order to successfully compete for this grant, the applicant will describe how each of the following areas will be accomplished over the period of performance.

#### 1. Development and Operation of Clearinghouse

a. Describe the methods that will be used to collect, catalog, and store documentation and other information about existing and past service integration projects so as to be retrievable. (Note that the documentation that is collected will become the property of the Government. In the event of the cancellation of this grant award or transfer of this function to another entity, the disposition of these documents shall be at the discretion of the Government.)

b. Describe how the Resource Center will have the capability of identifying, reviewing, and making other relevant information available without duplicating the work of other

organizations by obtaining access privileges/rights to these resources.

c. Describe the capacity of the proposed Resource Center to undertake critical analyses of the results of previous attempts to integrate the delivery of services to discover what has been learned and to propose more effective strategies for meeting the needs of the client which can be systematically tested.

d. Describe how these documentary materials will be made available to researchers and other interested parties both through on-site examination and distribution of photocopies.

e. Describe how information about on-going and new projects and other relevant studies will be disseminated to interested parties by a variety of means, e.g., publication of a newsletter or other printed materials, participation in meetings and conferences, maintenance of a dial-in bulletin board, etc.

## 2. Provision of Technical Assistance

a. Describe the experience and qualifications of staff in the following core service and related program areas: public education and comprehensive schools, family dysfunction and public child welfare services, school readiness and child development and child health services, job training and employment. Knowledge and experience with other relevant systems (e.g., public housing, transition from school to work, employment, mental health, juvenile justice) and with specific populations (e.g., children and youth at-risk, individuals with disabilities) is highly desirable and will be credited.

b. Describe how the applicant will be able to offer and provide technical assistance in such areas as the preparation of funding proposals, the design of information systems, the structuring of public accounting systems to provide a service with multiple funding sources, the design of formal evaluation studies, the provision of staff training, the preparation of any legal documents, e.g., articles of incorporation, interagency agreements, etc., and any other technical skill that the applicant might expect would be requested.

c. Describe how the applicant intends to advertise the availability of technical assistance under this grant, initially respond to requests, come to an agreement about the nature, scope, and level of effort with client agencies and/or communities, and evaluate progress in satisfying the client's needs and in achieving the goal of the Resource Center.

e. Describe how the Resource Center's technical assistance resource will be

coordinated with the activities of the facilitators described in Part III of this announcement.

## 3. Project Management

a. If appropriate, identify and provide a schedule for the execution of contracts and any other agreements necessary to carry out the activities of the Resource Center.

b. Describe how the Resource Center will plan, organize and conduct a required annual meeting of persons engaged in the development and operation of service integration projects at the state or local level.

c. Clearly describe the organizational structure of the proposed Resource Center, i.e., whether it is to be a single organization or a consortium. If a consortium arrangement is proposed, describe the legal, fiscal and organizational relationships to be established among the consortium members. Also, clearly demonstrate how the applicants will exercise leadership for the entire Resource Center.

d. Identify any advisory groups planned to assist the Resource Center's work and describe how such advisory groups will relate to the management of the Center.

e. Describe how the Resource Center will develop and submit required quarterly and annual progress reports, updated annual work plans and budgets, and a final project report which evaluates the outcome of the Center's efforts to promote changes in the way that health and human services are provided by supporting legal service integration efforts.

## D. Evaluation Criteria.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

### 1. Understanding of the Effort

The application discusses in detail the applicant's understanding of the need for the project, the background and current status of service integration efforts. The application also shows an understanding of the complexity and difficulty of undertaking collaborative efforts between systems. The application relates the project to the goals and objectives described in the first section of this announcement. (15 points)

### 2. Project Approach

The application outlines a sound and workable plan of action pertaining to the scope of the project and explains how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost of time, or extraordinary community, volunteer or private sector involvement; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. (40 points)

### 3. Staffing Utilization, Staff Background and Experience

The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the grant. The principal author of the application is identified and that person's role in the project is identified. (30 points)

### 4. Organizational Experience

The application identifies the qualifying experience of the organization (or group of organizations) to demonstrate the applicant's ability to effectively and efficiently administer this project. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. (15 points)

### E. Available Funding and Project Duration

DHHS intends to award one grant for a Resource Center in an amount not to exceed \$325,000 the first year and \$650,000 in each of the succeeding years, subject to a determination by DHHS that there is continuing need for these activities. We anticipate that the Resource Center will be funded for a total of five years. However, the application should be developed to show the planned activities and accomplishments for a project period of 36 months under this announcement. After the third year, this grant may be extended on a year-to-year basis for an additional two years subject to satisfactory performance, and availability of funds, and an approved revised workplan.

### Part III. Facilitation of Community-Based Service Integration Planning

#### A. Purposes

To promote service integration by facilitating the efforts of urban and rural communities who have already made a commitment to undertaking systemic changes to improve access to a wide array of services to address the increasingly multiple needs of young children and their families living in poverty. Accordingly DHHS intends to award two to five grants with "facilitators" to work with proposed clusters of 3-7 urban communities, and one grant with a facilitator to work with a proposed cluster of 3-7 rural communities who are committed to systems changes to meet the needs of children, youth, and their families through the integration of services.

A major goal of this effort is to provide localities with a framework, via the facilitators, to support their service integration efforts through coordinated community-based planning, providing or arranging for technical assistance, expediting any technology sharing, and convening periodic local meetings at each site. In this way, it is intended that the localities will adopt a proactive planning strategy that will enhance their likelihood of success in restructuring children and families services in the targeted site. Because localities are best suited to determine what their community needs to do to improve service delivery to families, an additional goal of this project is to allow facilitators flexibility in executing the required tasks in order to ensure that service integration approaches are locally-designed and implemented. Applicants should reflect an understanding of these goals and objectives in the proposal.

### B. Definitions

1. *Facilitator*. An individual, group of individuals, or organization (including public, private non-profit, and for-profit organizations) who performs the core functions and activities described in section C. and section D.3.b.

2. *Urban Site*. A proposed target area—such as a neighborhood, school district, school, housing project, etc.—located in an urban area as defined by the Bureau of the Census.

3. *Rural Site*. A proposed target area—such as a neighborhood, school district, school, housing project, etc.—located in a rural area as defined by the Bureau of the Census.

### C. Core Functions

The grantee will act as a promoter of service integration principles, a facilitator of community-based planning, an expeditor of technology sharing, a broker of technical assistance, a convener of periodic meetings at each site, and one who documents this entire process.

### D. Contents of Program Narrative

Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline. To be considered complete, the applicant should ensure that the following information is included in the application:

1. Describe the 3-7 sites to be included in the proposed cluster, documenting each site's:
  - a. Commitment to working toward systemic change of the delivery of children, youth, and family services (include a mission statement developed by members of the community);
  - b. Concentration of poverty;
  - c. Identified geographic area and/or population to target for specified services;
  - d. Current service integration efforts to serve families with children and youth with multiple needs;
  - e. Capability and desire to coordinate and integrate—at a minimum—the public education, public child welfare services, and health services. Efforts to integrate other relevant systems, e.g., public housing, employment, mental health, juvenile justice, are highly desirable and will be credited.
  - f. Provision of letters of commitment—detailing the kinds of commitment that each organization is making—from individuals, organizations, and agencies serving families in the targeted site from the public, private, and voluntary sectors of the community to work toward the stated goals; and

g. Comparability with other sites in the cluster.

2. In order to successfully compete for this grant, the applicant should describe how each of the following activities will be accomplished over the period of performance.

a. *Facilitate community-based planning*. Describe the composition of the community-based coalition of organizations committed to health and human service systems change; identify the roles and responsibilities of each organization in working toward the project goals. Describe how applicant will assist these organizations and individuals in the following planning activities:

- i. Creating a vision for the site and its citizens;
  - ii. Clearly defining the objectives of the site's service integration efforts;
  - iii. Selecting a target population or geographic area in which to begin the service integration efforts;
  - iv. Assessing the problems faced and strengths possessed by the target population;
  - v. Specifying the client outcomes that the sites are striving to achieve for their target families;
  - vi. Identifying the service needs in order to achieve these client outcomes;
  - vii. Identifying existing mechanisms used, and problems in, delivering these services (including resource limitations, statutory and regulatory barriers; financing problems brought about by categorical funding, turf battles, professional and/or philosophical differences among human service staff, etc);
  - viii. Recommending creative alternative solutions;
  - ix. Developing a plan for implementing selected alternative strategies,
  - x. Building an accountability system, including developing indicators and measures, to ensure that needed services are provided and client outcomes are achieved, and
  - xi. Developing a plan for the continuation of the community coalition and system restructuring beyond the project period.
- b. *Literature review*. Describe how applicant will review existing information on problems faced by localities attempting to restructure and integrate health and human services for children, youth, and families; current efforts to surmount these problems; and levels of success to date.

c. *Technical assistance and evaluation plan*. Describe how, based on the literature review, applicant will plan to provide technical assistance to sites

to facilitate their restructuring of their health and human service systems. Describe how applicant plans to evaluate the success of his efforts.

d. *Expedite technology sharing.* Describe how applicant will act as a broker for technology transfer, that is, how applicant will facilitate the planned, systematic process by which technologies (such as innovative tools, procedures, concepts, and practices), developed by one organization or site, are adapted and implemented by another organization or site.

e. *Provide or arrange for technical assistance in the development and operation of sites' service integration activities.* Describe how applicant will link the sites to needed technical assistance. Describe mechanisms for providing sites with periodic updates and information in a proactive manner. Applicants should describe how they plan to coordinate their technical assistance efforts with those of the Resource Center described in part II. of this announcement and how the materials developed in working with sites will be systematically provided to the Resource Center.

f. *Convene one meeting with the Resource Center staff.* Describe how applicant will organize and convene a meeting between two representatives from each site and Resource Center staff. Discuss what information will be provided to sites relevant to the effective implementation of their service integration plan. Describe what (if any) and how technical assistance may be provided at this meeting.

g. *Convene at least two local meetings at each site.* Describe how applicant will provide a forum for exchange of information relevant to the effective implementation of the site's service integration plan. Describe what (if any) and how technical assistance may be provided at these meetings.

h. Prepare quarterly reports on the status of planning for and implementing of the sites' service integration strategies.

i. *Prepare a final detailed report* on all aspects of the development, implementation, and evaluation of the project which includes at least the information listed below:

i. Process information, including: (a) A description of the health and human service delivery system for children, youth, and families, prior to this project, gaps in the existing system, and changes that occurred following implementation of the planned strategy;

(b) A description of sites' service integration goals and objectives, and plans for achieving these;

(c) A description of implementation problems and (Federal, state, local, procedural) and barriers identified by sites to achieving these goals and proposed solutions;

(d) A summary status of the sites' accomplishments to date and lessons learned upon completion of the project period,

(e) A description of the technical assistance efforts in the sites prior to this project, gaps in the existing system, the types of TA requested by sites, and the changes that resulted as a consequence of the facilitator's activities;

(f) A description of the plan and funding strategy for how the sites will continue to support the systems change upon the completion of the project period.

ii. The current status of each site's efforts. Provide for the production of a final status report, which provides a practical description of the projects undertaken at each site in the cluster, including:

(a) The model or approach implemented;

(b) The clients served, among those needing services;

(c) The operation of the integrated system, including methods of coordinating and scheduling service delivery and accountability;

(d) The financing of the system; and

(e) The presentation of any available client-outcome data.

iii. Proposed next steps and future technical assistance needs. Synthesize findings from all sites' activities and highlight key factors that appear necessary to improving family outcomes via integrated health and human service systems. Propose useful next steps in the area of supporting localities' service integration efforts at the local, state, and Federal levels, including the roles of both the public and private sectors. Identify useful forms of technical assistance requested and used by sites, as well as types of technical assistance not readily available and needing development. Propose strategies for ongoing effective coordination with the Resource Center.

#### E. Evaluation Criteria

The evaluation criteria correspond to the outline in the Content of Program Narrative section (D) of the application.

##### 1. Understanding of the Effort (10 points)

The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the need to coordinate human services delivery, and the current activities being undertaken—beyond the

proposed sites' activities—that demonstrate the pervasiveness and universality of issues being addressed by service integration efforts.

##### 2. Overall Project Approach (40 points)

a. Site selection (20 points). The applicant proposes a cluster (3-7) of either urban or rural sites who meet the criteria listed in section D.1.

b. Approach (20 points). The applicant proposes a plan for how s/he intends to conduct the activities described in section D.2.

##### 3. Staff Background, Experience, and Proposed Utilization (25 points)

The application identifies the background, qualifications, and experience of the facilitator and any proposed principal project staff members. Staff have experience and qualifications in health and human services delivery related to: public education, public child welfare services, and health services. Staff have additional knowledge and experience with other relevant systems, e.g., public housing employment, mental health, juvenile justice, etc. The facilitator working directly with sites has experience in community leadership and problem-resolution at the community level. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the grant. The principal author of the application is identified and that person's role in the project is identified.

##### 4. Management Capacity (25 points)

The application demonstrates the adequacy of the management plan, including:

- Overall management of the project and procedures for quality control and review;
- Work schedules for activities, timetables for deliverables;
- Personpower loading by activity which lists the person hours for each staff member;
- Evidence of ability to have sufficient staff available to accomplish the work, including letters of commitment from consultants, if utilized and the percent time for each person on the project;
- A matrix of skills for staff and consultants.

The application specifically identifies the applicant as one who has a record of assisting urban and/or rural communities with their service integration efforts. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a

chart which lists all related Federal, state, and local assistance received within the last five years. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer.

#### *F. Availability of Funds*

DHHS intends to award two to five grants with "facilitators" to work with proposed clusters of 3-7 urban communities, and one grant with a facilitator to work with a proposed cluster of 3-7 rural communities who are committed to systems changes to meet the needs of children, youth, and their families through the integration of services. DHHS anticipates awarding approximately \$625,000 in FY 1991 with an additional \$625,000 to the same facilitators and sites for continuing activities into FY 1992, subject to DHHS's determination of satisfactory performance and of a continued need for this effort, and to the availability of funds. The size of the awards will vary depending on the level of effort proposed for meeting the technical assistance needs of the sites, however no award will exceed \$200,000 per year without special justification.

#### *G. Effective Date and Duration of Project*

We anticipate that these facilitators will be funded for at least 24 months. After the second year, this grant may be extended for an additional 12 months (for a total of three years) subject to satisfactory performance of and a determination of a continued need for this effort, and the availability of funds. No additional competition will be required. However, the application should be developed to show the planned activities and accomplishments for a project period of 24 months under this announcement.

### **Part IV. Information on Completing an Application**

#### *A. Application Preparation*

This part contains information on the preparation of an application under this announcement. Applicants are advised to read and follow this section very carefully. Applications which do not meet certain requirements of timeliness or completeness will not be considered or reviewed in the competition, and the applicant will be so informed. These requirements are to assure fair consideration for all applicants. A failure to respond to other suggestions listed here, while not required, may result in a competitive disadvantage when compared to other applications.

#### **1. Application Requirements**

Three copies of an application shall be submitted. One of the copies shall contain an original signature (preferably in blue ink) in block 18(d) of SF 424 and on the other certification forms. In addition, applications must be timely and complete as described in sections C and D below in order to be considered for the independent competitive review required by chapter 1-62 of the DHHS Grants Administration Manual.

#### **2. Funding Information**

Applicants may apply for one or both grants as described in parts II. and III. Applicants should refer to the information provided in part II. and/or part III regarding the amount of funds available and the duration of the grants. Applicants should clearly state in the opening paragraph of their application narrative which part(s) of this announcement they are applying for.

DHHS reserves the right to award the entire effort to one organization or to separate the effort into multiple projects depending on the scope and quality of the submissions. It is the intent of DHHS to make sufficient awards as to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it. However nothing in this application should be construed so as to obligate the Assistant Secretary for Planning and Evaluation or the Department to make any award.

#### **3. Budget**

Budgets for individual projects (clusters) under section III should not exceed \$200,000 per year. Describe how project funds will be expended. Include a line item for participation in at least 2 cluster group meetings over the project period to exchange information about the status of and lessons learned from their efforts. Propose a location of mutual convenience to all sites. Include a line item for at least one meeting with the Resource Center staff for the principal facilitator and for two people per site. If applicant is applying for both part II and part III grants, indicate in the budget where there may be cost-savings from conducting both activities simultaneously. Provide assurance that these grant funds will not be used for service provision.

#### **4. Program Narrative**

The Program Narrative is the most important part of the application. It should be clear, concise, and pertinent to the functions, activities, and issues of the area for which the application is

being submitted. There is no specific limit on for the length of the application. However, applications that are verbose or contain superfluous material will be viewed as lacking a clarity of purpose and design and likely to result in an inefficient approach.

The outline of the application narrative should follow the evaluation criteria listed in part II or part III. The application should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including an organization chart and other diagrams which will display the management information provided in the text; and (2) a financial plan, which specifically displays and explains the details and assumptions behind the estimated costs shown in the budget information shown on the application form (SF 424).

The narrative should be typed on one side of standard-sized (8½" x 11") plain white paper with 1" margins on all sides. All pages of the program narrative (including charts and diagrams) should be sequentially numbered. In order to facilitate handling, please do not include extraneous material such as promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

#### **5. State Single Point of Contact (E.O. No. 12372)**

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

#### *B. Review Process*

All applications that are submitted by the deadline date will be screened to ensure completeness. Applications that are incomplete will not be reviewed. Applications that pass the initial screening will be reviewed and scored competitively using the evaluation criteria listed in sections II and III to score the applications. DHHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of ASPE staff, will be considered in making funding decisions.

### C. Components of a Complete Application

A complete application, responding either to the Resource Center announcement in part II. or the facilitator announcement in part III., consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4-88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4-88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4-88);
4. Table of Contents;
5. Budget justification for Section B-Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
  - (a) Understanding of the effort,
  - (b) Project approach,
  - (c) Staffing utilization, staff background, and experience
  - (d) Organizational experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to key personnel;
14. Checklist.

### D. Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is August 19, 1991.

Applications must be mailed with a post mark by midnight, or hand-delivered no later than 5 p.m. on August 19, 1991 to: Grants Officer, DHHS/ASPE, Hubert H. Humphrey Bldg., room 415F, 200 Independence Ave., SW., Washington, DC, 20201.

Hand-delivered applications will be accepted Monday through Friday prior to and on August 19, 1991 during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call (202) 245-1794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1)

Received at, or hand-delivered to, the mailing address on or before August 19, 1991, or (2) Postmarked before midnight of the deadline date, August 18, 1991 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 19, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the Government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Dated: June 24, 1991.

Martin H. Gerry,  
Assistant Secretary for Planning and Evaluation.

[FR Doc. 91-15424 Filed 6-27-91; 8:45 am]

BILLING CODE A150-04-M

### Administration on Aging

[Program Announcement No. AOA-91-3]

#### Fiscal Year 1991 Program Announcement; Availability of Funds and Request for Applications

**AGENCY:** Administration on Aging, HHS.  
**ACTION:** Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building project activities in support of the National Eldercare Campaign for older persons at risk.

**SUMMARY:** The Administration on Aging (AoA) announces its Discretionary Funds Program (DFP) for Fiscal Year

1991. This year the DFP is designed to strengthen knowledge building, program innovation and development, information dissemination, training, technical assistance, and other capacity-building efforts focused on eldercare service systems for older Americans at risk of losing their independence. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89-73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of these activities.

**DATES:** The deadline for receipt of applications under this announcement is August 9, 1991.

**ADDRESSES:** Application receipt point: Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., room 341F.2., Washington, DC 20201, Attn: AoA-91-3.

**FOR FURTHER INFORMATION CONTACT:** Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4661, Washington, DC 20201, telephone (202) 619-0441.

#### SUPPLEMENTARY INFORMATION:

##### Part I Background

##### A. Eldercare: Challenge for the 1990s and Beyond

Demographic trends highlight the growing numbers and importance of our older population, both now and in the future. By the year 2030, one of every four Americans, over 83 million persons, will be 60 years or older and

approximately 8 million of them will be age 85 or older. What has been called the graying of America has captured considerable media attention and given rise to widespread concern over future economic, political, and societal trends, especially when the baby-boom generation reaches age 60+ in the early decades of the 21st century.

It is vitally important that we, as a nation, focus on the need to build our capacity to respond to the dramatic increase in our older population today and into the next century. That challenge is heightened by the growing numbers of elderly who are at risk, including those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. At special risk are those older people who are poor; particularly women, rural Americans, and members of minority groups. For these and other older Americans, the crucial consideration is to function independently at home and in the community as long as possible. Their greatest fear is that, if and when they begin to lose that independence, there will be no one and no place to turn to for help.

The term "eldercare" is gaining broad acceptance as defining the caregiving role our society must play on behalf of older persons. Within that context, the National Eldercare Campaign focuses on care provided to older persons at risk through home and community-based services. While most care is provided by family members, friends and neighbors, eldercare can also be made available through formal social and health support systems, religious organizations, fraternal groups, national organizations and corporate benefit programs established to assist employees in carrying out their caregiver roles for at-risk family members.

The Administration on Aging recognizes that much has and is being accomplished through both the informal and formal support systems to care for older persons at risk. Federal, State, and local governments, as well as the private and voluntary sectors, have made progress to expand eldercare services. However, many prominent organizations and individuals have not yet played a role in this effort. More can be done not only to bring nontraditional resources and approaches to bear on the problem, but also to reinforce our family and community-based systems of care.

#### B. The National Eldercare Campaign

The U.S. Commissioner on Aging, Joyce T. Berry, Ph.D., has recently announced the start of a National

Eldercare Campaign—a nationwide, multi-year effort to mobilize resources for home and community-based care for older persons at risk of losing their self-sufficiency. The cornerstone of the campaign is a national public awareness strategy. It will be directed toward making all segments of society aware of the implications of an aging society and of the role public, private, and voluntary organizations can play in ensuring the availability and accessibility of home and community-based services for older persons at risk, now and in the future.

The commitment to helping at-risk older persons encompasses both informal and formal support systems, organizations and leaders in the aging constituency as well as organizations with a new-found consciousness of eldercare issues. The eldercare campaign will be aimed at expanding the involvement of a wide variety of agencies and organizations representing government, business, labor, the voluntary, religious, and civic communities. The Administration on Aging will encourage these organizations to: (1) Develop relevant eldercare activities at the national level related to their organization's concerns; and (2) encourage their State and local affiliates to participate in State and local eldercare coalitions aimed at building systems of quality eldercare services in every community.

Because the National Eldercare Campaign is focused on how older persons at risk are served in their homes and in their communities, action at the State and local levels is critical to the success of the Campaign. State and community eldercare coalitions, in which State and Area Agencies on Aging have a catalytic leadership role, will be called on to demonstrate that the public, private, and voluntary sectors can be mobilized around an eldercare agenda and cooperate effectively in providing home and community-based services for older persons at risk.

The Administration on Aging is in the process of awarding a number of grants and contracts in conjunction with the National Eldercare Campaign. In accordance with DHHS policy governing the use of contracts and grants, activities which provide direct benefits to the Administration on Aging will be supported through the contract mechanism. Other activities which promote more generally the goals of the National Eldercare Campaign will be supported by grants and cooperative agreements.

**NATIONAL ELDERCARE INSTITUTES** will be established and operated as another major commitment by the Administration on Aging to achieve the

objectives of the National Eldercare Campaign. The Eldercare Institutes are designed to focus on critical substantive areas closely related to the delivery of eldercare services in the home and in the community. Their roles will be to serve as a knowledge base and program resource, to promote the effective transfer, dissemination, and utilization of relevant information, and to provide needed training and technical assistance. National Eldercare Institutes are planned in the following areas:

- Long Term Care
- Elder Abuse and State Ombudsman Services
- Older Women
- Multipurpose Senior Centers and Community Focal Points
- Transportation
- Housing and Supportive Services
- Nutrition Services
- Human Resources Development
- Health Promotion
- Income Security
- Employment and Volunteerism
- Business and Aging
- Coalition Building

The National Eldercare Institutes, their functions, and their activities, were the subject of an AoA program announcement which was published in the *Federal Register* on April 29, 1991. Copies of that program announcement may be obtained by contacting AoA at (202) 619-0441.

#### C. Coordination With Other Federal Agencies

Under the Older Americans Act, the Administration on Aging functions as a focal point within the Federal government for aging-related concerns. In that capacity, AoA advises the Secretary of Health and Human Services in matters affecting older Americans and provides consultation and information to other Federal agencies on the characteristics, circumstances, and needs of older persons. AoA's national level program and advocacy responsibilities place major emphasis on the development of collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Interagency Agreements with such relevant Federal departments and agencies as the Departments of Transportation, Housing and Urban Development, and Labor, the Social Security Administration, the Health Care Financing Administration,

ACTION, and the National Institute on Aging.

Recent examples of AoA initiatives to improve coordination with other Federal efforts include: a Housing initiative with a Memorandum of Understanding (MOU) with the Farmers Home Administration (FmHA) of the Department of Agriculture, the focus of the MOU being to promote the well-being of older persons by providing a coordinated, integrated response to the housing and supportive service needs of older persons, particularly those programs serving the rural and low-income elderly; and an employment initiative with the Employment and Training Administration (ETA) to facilitate cooperation between the two agencies, to assist States and local communities in improving linkages between human service programs, and to achieve an integrated response to increasing employment and training opportunities for older persons.

During 1990 joint efforts included AoA/ACTION sponsorship and funding of a three-year program to demonstrate innovative approaches to gain private sector support for expanding the number of Senior Companions providing in-home services to homebound vulnerable older persons, and a multi-purpose *Transportation* initiative, which was designed to improve the coordination of transportation services funded under the Urban Mass Transportation Act of 1964, as amended, and the Older Americans Act which relate to older persons.

AoA has recently established a Federal Interdepartmental Task Force to better identify issues for policy and program coordination and to develop collaborative interdepartmental approaches in preparation for the changing and growing elderly population. The Task Force is comprised of representatives from the Department of Education, Department of Veterans Affairs, Department of Labor, Department of Housing and Urban Development, Department of Transportation, Department of Agriculture, Social Security Administration, Health Care Financing Administration, National Institute on Aging, Administration on Families and Children, Health Resources and Services Administration, and the Food and Drug Administration. The Task Force established four work groups to address the following areas: Housing, Employment/Volunteers, Health, and In-home and Community-Based Care Services. The work groups have convened meetings to identify and select issues of major concern in the designated subject area, prioritize

issues, develop action plans and report recommendations to the Task Force.

These interagency collaborations, along with the National Eldercare Campaign, represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence. AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallels the subject areas of the National Eldercare Institutes (which, as stated above, are the subject of a previously published program announcement) as well as a number of the priority areas in this announcement. In both subject matter and functional terms, discretionary projects will serve to complement and augment the gains achieved through interagency cooperation.

The discretionary projects to be funded under this announcement and the Institutes will also serve as a technical resource in enhancing AoA's ability to play a coordination role in such complex emerging areas as, for example, Federal implementation of the Americans with Disabilities Act (ADA), which will have wide ramifications for housing, transportation, employment, rehabilitative, and other services for the disabled elderly. ADA is expected to be a focus of attention and policy consideration during the next several years and several of the projects funded under this DFP could serve as a major resource to AoA in this area.

#### D. The AoA Discretionary Funds Program

This Fiscal Year 1991 Discretionary Funds Program (DFP) is another element of AoA's program commitment to the National Eldercare Campaign. The DFP is the focus of this announcement and is described in detail below.

The Discretionary Funds Program, as authorized by title IV of the Older Americans Act, constitutes the major research, demonstration, training, and development effort of the Administration on Aging. The title IV program is directed, generally, toward supporting advances in knowledge, developing innovative model programs and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary programs are also focused on current issues significant to the well-being of the older population.

With its dual emphasis on contemporary aging program issues and on preparing for a future aging society,

the Title IV Discretionary Funds Program is well suited to support the National Eldercare Campaign. Eldercare for older persons at risk embodies a set of salient policy issues and societal concerns that will carry through the 1990's and well into the 21st century. Underlying these issues and concerns is the recognition by AoA and the nationwide aging network that we must develop and use our resources to (1) serve the current generation of older Americans more effectively and (2) achieve a long range capacity to respond to the dramatic increases in the older population projected for the coming decades. The AoA Discretionary Funds Program for FY 1991 is directed toward building that capacity, in the near and the long term, to better serve older Americans at risk of losing their independence.

#### E. Technical Assistance Workshops for Prospective Applicants

Workshops will be held in Washington, DC and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the technical assistance workshop you are interested in attending.

City	AoA contact person
Washington, DC.....	Saadia Greenberg, (202) 619-0441.
Boston, Massachusetts.	Acting AoA Regional Program Director, (617) 565-1168
New York, New York..	Judith Rackmill, (212) 264-2976.
Philadelphia, Pennsylvania.	Paul E. Ertel, Jr., (215) 596-6891.
Atlanta, Georgia.....	Franklin Nicholson, (404) 331-5900.
Chicago, Illinois.....	Eli Lipschultz, (312) 353-6503.
Dallas, Texas.....	John Diaz, (214) 767-2971.
Kansas City, Missouri.	William Weisent, (816) 426-2955.
Denver, Colorado.....	Elizabeth Clinton, (303) 844-2951.
San Francisco, California.	Acting AoA Regional Program Director, (415) 556-6003.
Seattle, Washington....	Chisato Kawabori, (206) 553-5341.

#### F. Statutory Authority

The statutory authority under which grants and cooperative agreements will be awarded through the AoA Discretionary Funds Program is Title IV of the Older Americans Act, as amended (42 U.S.C. 3001 et seq.).

### *G. Public Comments on this Announcement*

AoA invites comments on this Discretionary Funds Program Announcement. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

### **Part II—Priority Areas**

The objectives of AoA's National Eldercare Campaign constitute the basic organizing framework for the FY 1991 Priority Areas included in this Discretionary Funds Program announcement. This part of the announcement provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions regarding eligibility, costs, and duration may be found under the individual priority areas. For the convenience of prospective applicants, a listing of the FY 1991 priority areas is provided. Following the listing, each priority area is described in detail.

Applications are expected to be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

#### *A. Eligible Applicants*

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. Applications from individuals can not be considered because they are ineligible to receive a grant award under the provisions of title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but they may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this Program announcement that is not now a DHHS grantee should include with its application Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant can not be funded without proof of its status.

#### *B. Project Costs and Duration*

Under each priority area, AoA has estimated the number of projects to be funded and offered guidelines regarding both the duration of those projects and the anticipated Federal share of project costs. Because applications are

reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to those guidelines.

#### *C. List of Priority Areas*

1. Building Public Awareness About Eldercare
2. Community Action and Coalition Building to Promote Eldercare for Older Persons At Risk
3. Human Resources Development for Quality Eldercare Services
  - 3.1 Promoting Academic Involvement in Eldercare
  - 3.2 Dissertation Program (Home and Community Based Care)
  - 3.3 Minority Management Training Program
  - 3.4 Improving the Supply of Paraprofessional Home Care Workers
4. Greater Advocacy by National Aging Organizations
5. Enhancement of Dissemination and Utilization of Information on Aging
6. National Academy on Aging

#### **Priority Area Descriptions**

##### *1. Building Public Awareness About Eldercare (Non-Aging Organizations)*

The Administration on Aging (AoA) announces the availability of funds aimed at stimulating organizations and associations, whose predominant focus is not aging, to involve their members/affiliates in concerted efforts to enhance public awareness about issues facing our increasingly aging society. The graying of our population is a concern of all segments of society—business, labor, professional organizations, religious and academic institutions, and the voluntary sector, among others. They can expect that an ever greater portion of their agenda will be concerned with the nation's older population.

Most older persons are resourceful, healthy and active. However, a significant segment of our elderly need some assistance to maintain their independence and may become increasingly vulnerable without the proper eldercare service systems.

Many aging-specific organizations have made significant inroads toward increasing public awareness of concerns relative to aging. It is our intent, however, through this solicitation to encourage national organizations and associations which have not had a predominant focus on aging to broaden their goals to include the promotion of awareness activities on behalf of older persons. Some of the areas in which greater awareness is needed include: (1) Demographic changes in American

society; (2) the special needs of the at risk elderly; and (3) how individuals and organizations can assist in meeting those needs.

Applications are solicited from non-aging national organizations and associations to promote awareness among their membership as well as the general public of the need to take action now to prepare for an aging society. Such organizations and associations include, but are not limited to, business groups, labor unions, professional organizations, religious and academic institutions, and voluntary and civic associations. Greater attention must be given by all segments of society to the special needs of the vulnerable elderly; organizations funded will be promoting this goal as an activity of their organization and not as agents of AoA.

It is not the intention of AoA to specify the approach to be taken by the grantees. Examples (not requirements) of such activities might include: (1) The development and dissemination of printed or audio-visual materials both for their membership and the general public; (2) development and presentation of regional and national training both for the public and for the members of the organization or association; (3) special emphasis events at conventions and meetings; or (4) providing assistance to their local chapters or affiliates in developing local programming to make their communities more aware of the needs of older people and of how they can strengthen their services network. Of particular interest is the utilization of opportunities for organizations and associations to adopt or integrate eldercare into their ongoing agendas. Such opportunities are often presented through symposia, forums, workshops, regional and national conferences.

Where appropriate, AoA encourages applicants to promote a greater understanding of the issues associated with eldercare and develop innovative approaches to meeting the special needs of those older people at risk of loss of independence. Projects are expected to collect sufficient information on their operational activities to facilitate independent program evaluations.

Approximately ten (10) awards will be made to national associations—whose predominant focus is not on aging—which have affiliate members or chapters across the nation. Organizations must have a track record of effective dissemination and public awareness type activities. Applicants must demonstrate an institutional commitment toward establishing an agenda of action on behalf of the at risk

elderly; provide information about how similar or related activities will continue following the grant award period. Grant awards of approximately \$100,000 are available to successful applicants for project periods of approximately 17 months.

*2. Community Action and Coalition Building to Promote Eldercare for Older Persons at Risk*

Communities across the nation are currently confronted with the challenge of providing eldercare services for older persons at risk. In response to this challenge, and as a key component of the National Eldercare Campaign, the Administration on Aging has launched *Project CARE: Community Action to Reach the Elderly*. Project CARE is a nation-wide coalition building effort which combines the resources of AoA, State Agencies on Aging, Area Agencies on Aging, and other organizations committed to better meeting the needs of the vulnerable elderly. It is focused on grass-roots community action, on establishing Project CARE communities which will demonstrate that through coalition building, non-traditional approaches can and will work in providing home and community-based eldercare services for older persons at risk.

Under the funding support of a recently announced AoA Project CARE Eldercare Coalition Demonstration Program, State and Area Agencies on Aging will designate up to 150 communities which will take on a special leadership role in spearheading Project CARE. This priority area is designed to be a complementary part of Project Care. It seeks to further catalyze community action, in as many as 150 additional Project Care communities, aiming toward the building of new non-traditional coalitions to work on behalf of the at-risk elderly.

It is AoA's intent under this priority area to support coalitions in communities that are different from those communities which will be selected as part of the Eldercare Coalition Demonstration Program. To help ensure that these two programs elements of Project CARE are coordinated, State Agencies on Aging should be consulted regarding the communities selected for participation in the projects proposed for funding under this priority area. As noted below, for purposes of this priority area, applicant eligibility is limited to Area Agencies on Aging and those State Agencies on Aging with single Planning and Services Areas. (For convenience of expression only, unless otherwise noted, the Area Agency on Aging will typically

be identified as the applicant organization).

Under this priority area, Area Agencies on Aging are encouraged to identify and utilize the talents of organizations (working under subcontract to the Area Agency on Aging) which are skilled at community organizing and coalition building to assist communities in developing the leadership and plan of action necessary to meet the home and community-based service needs of increasing numbers of older persons at risk. The degree to which seniors will maintain their independence rests, in large part, with the effectiveness of our support systems at the community level. Available information makes it clear that many seniors do not receive the needed assistance from the traditional formal or informal caregiving systems. For example, many older persons following their discharge from a hospital, are in need of non-health related care to be fully able to recuperate in their own homes. Yet others have lost the ability to perform one or more of the activities of daily living which are the key to remaining independent in the home. It is critical and imperative, therefore, that we develop mechanisms, systems and procedures to assist these and other at-risk elderly.

State and Area Agencies on Aging, service providers, and senior centers have been in the forefront of helping older persons for over 25 years. The growing numbers of seniors in need of home and community based care warrant innovative approaches to complement the traditional supportive services provided through our ongoing programs. Nontraditional approaches are needed to provide services to older persons. To serve the elderly effectively, all segments of the community must join together to assess the specific needs of its seniors, examine what systems are in place; and develop a plan of action to assist the vulnerable elderly. This priority area is focused on stimulating community action on behalf of at-risk older persons through community organization and the building of broad-based coalitions to mobilize the resources of the community to develop and carry out action agendas.

Applications are solicited from, and awards will be made to, only those Area Agencies on Aging which identify, and propose to work through, a subcontractor community organization which can demonstrate to the Area Agency on Aging that it has: a capability for applying innovative approaches to community organization; a proven ability to effectively mobilize resources

and services systems on behalf of a targeted population; and an appropriate understanding of the issues related to service provision on behalf of the elderly. The application must specify the community organization which will receive the subcontract and must describe the experience of that organization in community organization work.

Under the first phase of this grant, the community organization, using title IV funds, will assist at least three communities within the Area Agency's Planning and Service Area (PSA) to develop effective community coalitions to help older persons. The application must clearly identify the communities to be targeted. In the second phase of the grant the community organization will, using funds from other sources, assist at least three additional communities within the PSA. The application must clearly state that the effort supported by this grant award will be replicated in at least three additional communities with non-title IV resources to be obtained by the applicant and the communities to be assisted. The applicant must identify the other three communities as well as the potential source(s) of funding.

For purposes of carrying out both phases of activity under this priority area, the following definitions are applicable:

*Community:* Defined in geographic terms, a community is almost always smaller than a Planning and Service Area (PSA). Examples are a neighborhood in a large city, a medium or small city, a town or other place where people live and work.

*Membership of Coalitions:* Defined as comprised largely of organizations and groups without a predominant focus on aging, such as the business sector, organized labor, the civic, fraternal, and religious communities.

*Objectives of Coalitions:* With the defined aim of expanding home and community-based services for at-risk older persons, coalitions will identify and focus on one priority need of the community and develop and implement an action plan to meet that priority.

The methodology or process to be used to stimulate and promote the development of nontraditional approaches to service delivery to older persons at risk such as effective coalition building must be clearly defined. The use of creative approaches is strongly encouraged. The application must demonstrate the ability of the community organization, working under the direction of the Area Agency on Aging, to serve in a critical catalytic role and assist six communities to address

the serious challenges now confronting them as a result of the growing numbers of at-risk seniors in need of eldercare services. The Area Agency on Aging community organization must strive to assist communities to strengthen or develop effective eldercare systems for older persons at-risk through the utilization of nontraditional providers such as, religious institutions, civic and fraternal organizations, business and labor, academic institutions, volunteers, professional organizations and associations, and many other segments of the community.

The Area Agency on Aging and the community organization must show an ability to assist the community to institutionalize a process which promotes an ongoing and responsive support system for its seniors. The community organization must serve as a facilitator in promoting leadership by members of the community on behalf of seniors. AoA is particularly interested in projects which show how they will utilize the best practices for carrying out effective community organization and dissemination activities. Letters of support are required from the cognizant State Agency on Aging and from an official representative agency of each community to be helped.

Only Area Agencies on Aging and State Agencies on Aging with single Planning and Service Areas, working in conjunction with qualified community organizations are eligible to apply for this grant. It is anticipated that a total of twenty-five (25) awards will be made at a Federal share of approximately \$25,000 each and for approximately 17 months. Of the \$25,000 to be awarded, at least \$20,000 must be subcontracted to the community organization; the remainder may be used to support project related allowable costs of the Area Agency on Aging.

### 3. Human Resources Development

A major element of the Administration on Aging (AoA) mission is to address the critical shortages of personnel to provide eldercare services for the elderly. There is a need to attract a greater number of qualified personnel into the field of aging and to develop more highly skilled persons to improve the quality of care provided to the elderly.

AoA is encouraging academic institutions to become more involved in increasing public awareness about societal changes needed to address the greater demands for home and community based care for the elderly. Academic institutions need to become more actively involved in creating greater public awareness about the

expanding aging population; in stimulating greater understanding within all relevant academic disciplines regarding the role they can play in addressing the growing need for eldercare; and in expanding efforts to educate the public about the need for more and better eldercare services.

In order to focus greater attention on the problems of older persons at risk, gerontological content should be incorporated into college curricula and the training of all professionals who work with, or on behalf of, older persons. In addition, there is a need for providing mid-level or career ladder training for those working in the human services and aging networks. Yet another concern is how to provide specialized training to attract qualified individuals to those program areas experiencing shortages of personnel.

In light of the considerations expressed above and our concerns about the growing number of "old-old" (those persons 85 years of age and older) in our society, AoA has selected priority areas under the heading of Human Resources Development that are designed to develop an expanded, more skillful, and better trained workforce capable of responding to the ever greater demands for home and community based care for the at risk elderly. Training and career development applications are solicited in four priority areas:

- 3.1 Promoting Academic Involvement in Eldercare;
- 3.2 Dissertation Program;
- 3.3 Minority Management Training Program; and
- 3.4 Improving the Supply of Paraprofessional Home Care Workers

#### 3.1 Promoting Academic Involvement in Eldercare

The Administration on Aging (AoA) has long recognized the critical need for faculty and program development in the field of aging in institutions of higher learning. This year AoA intends to address this need by encouraging institutions to incorporate the concepts of the National Eldercare Campaign into the curricula of appropriate disciplines and professions. As described above, the National Eldercare Campaign is mobilizing new and existing resources for home and community-based care for at-risk older persons.

Institutions of higher learning are in a position to greatly benefit the elderly now and in the future. They have at their disposal information, know-how, manpower and other resources, that, when applied to the problems facing the elderly could greatly retard the loss of

independence in the at-risk older population.

Manpower studies highlight the need for faculty with expertise in aging in all health and human services professional schools. Highly trained faculty members are needed to help students understand the aging process, gain sensitivity about the needs and values of older persons, and most importantly, to discover ways for our society to meet the challenges of an aging society. Faculty must assume leadership roles in inspiring students to work effectively with older persons. AoA is relying upon the formal preparation, research interests, and departmental orientation of new and tenured faculty to influence the course offerings of academic institutions. AoA endeavors to develop an experienced cadre of faculty who are adequately prepared in geriatrics and gerontology to provide leadership essential to increase the number of graduates who are prepared for employment in fields of aging.

These same studies highlight the need for faculty and institutional development in minority institutions in order to increase the numbers of minorities prepared for employment in the field of aging. Many institutions of higher education with predominantly minority enrollments, including the Historically Black Colleges and Universities (HBCUs), could benefit from assistance in developing and upgrading gerontological training programs. Assistance is needed in the areas of program and faculty development, and student support.

AoA solicits applications from institutions of higher education and education based organizations for projects to conduct program development efforts to establish and/or upgrade gerontological training programs by including the concepts of the National Eldercare Campaign in their programs. The applicant should address Eldercare concerns by focusing on such activities as:

(1) Incorporation of a community organization approach with an eldercare agenda into the teaching and internship programs of the institution. Curriculum content should focus on the home and community-based service needs of older persons at risk.

(2) New approaches to involve faculty in community level coalition building as an effective approach to enhancing home and community-based services for older persons at risk.

Programs may use a variety of approaches, including: formal programs for linking faculty and curricula to eldercare issues; curriculum replication

where one institution works with three to five other institutions which are interested in developing programs, a team approach in working together; or a mentoring approach. In addition, we encourage programs which provide opportunities for faculty to undertake special assignments in developing community eldercare coalitions and initiatives.

Projects funded under this priority area may include faculty and student stipends as necessary to promote the development of their programs, especially those at minority institutions. All stipends are expected to be set at a level commensurate with the experience and qualifications of the individual supported.

Applications should include the following:

(1) Written assurances from each of the organizations and institutions involved in the collaborative effort regarding the types of activities planned and how they will be carried out; and

(2) Written commitment and plans from faculty participants and appropriate officials from participating institutions to develop and/or enhance the curriculum within one year of program completion.

AoA intends to fund approximately eight (8) projects under this priority area with a Federal share approximating \$75,000 per project for a maximum duration of approximately 17 months. Applicants are encouraged to develop close linkages with State and Area Agencies on Aging as well as community level coalitions formed under the National Eldercare Campaign and other relevant community organizations in the development of the application and the implementation of the project.

### 3.2 Dissertation Program (Home and Community Based Care)

Our older population has increased dramatically and will continue to do so into the next century. By the year 2030 one of every four Americans, over 83 million people, will be 60 years or older and 8 million will be age 85 or older. It is vitally important, therefore, that we focus on the need to build our capacity to respond to the dramatic increase in our older population today and into the next century. That challenge is heightened by the growing numbers of elderly at risk, including those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. For these and other older Americans, the crucial consideration is to function independently at home and in the community as long as possible.

The Administration on Aging (AoA) is interested in supporting doctoral dissertations that focus on the eldercare needs of older persons at risk and the care provided such persons through home and community-based services. It is expected that these studies will expand our knowledge base relevant to policy and program issues in this area. In evaluating doctoral dissertation applications for approval and funding by AoA, emphasis will be placed on:

(1) The objectives of the proposed research and its relevance to the problems faced by older persons at risk of losing their independence;

(2) The results and benefits to be expected from applying the findings of the research to the needs and circumstances of older persons at risk;

(3) The methodological soundness of the proposal.

Investigations, utilizing principles from the social, behavioral, and/or health oriented sciences, should examine how policies and programs in such areas as health care, adult day care, foster care, or other services affect older people in need of eldercare services. Applicants are strongly encouraged to submit proposals whose findings will have broad applicability and nationwide implications for older people. In order to both attract minority professionals to the field of aging and to advance research on minority aged, AoA actively encourages universities to submit doctoral dissertation proposals by minority students.

AoA anticipates funding approximately 8 projects for approximately 17 months at a level of approximately \$15,000. The grant must be used during the year(s) designated on the notice of Financial Assistance Award and cannot be deferred. The approved doctoral dissertation will constitute the Final Report to the Administration on Aging.

The following terms apply to grants awarded under this priority area:

(1) The grant will be used to support costs incurred by the doctoral candidate in conducting the research and writing of the project outlined in the approved dissertation proposal.

(2) No indirect costs will be provided to the university. (Applicants should not fill in budget line items referring to indirect costs.)

#### Eligibility

##### (1) Universities

Proposals will be submitted by universities granting doctoral degrees and not by the student requesting the grant.

##### (2) Doctoral Candidates

Only doctoral candidates are eligible to participate in this program. Each candidate must have completed all the course work, written and oral examinations, language and other requirements for the doctoral degree, and received approval of the dissertation research proposal, or have met these requirements before the grant is effective.

#### Application Process

The applying university should include separate applications for each proposed dissertation research grant. The doctoral candidate's dissertation proposal itself should constitute the program narrative section of the application. In addition to meeting the pertinent requirements of part III of this Announcement, each application should contain a page which highlights the following:

(1) Project Director: Name, address and phone number of doctoral candidate. Candidate should sign original or master copy of the application.

(2) Sponsor: Name, position, phone number of university advisor or sponsor. Sponsor should sign original or master copy.

(3) Notice of dissertation research proposal's approval by appropriate faculty advisors and committees.

### 3.3 Minority Management Training Program

AoA is interested in funding special training projects to increase the number of qualified minorities in key management/administrative positions in State and Area Agencies on Aging and other agencies and organizations which impact on those older persons who are at-risk of losing their independence. Applications are solicited from State Agencies on Aging, Area Agencies on Aging where the proposal has the endorsement of the appropriate State Agency on Aging, educational institutions, Indian Tribal Organizations funded under Title VI of the Older Americans Act, and other appropriate aging related organizations to participate in the Minority Management Training Program. The objective of this program is to increase the professional credentials of minority trainees to help these individuals make the transition from a staff level position to a managerial/administrative position.

The program is designed to assist highly motivated minority professionals, preferably with advanced degrees or a bachelor's degree and several years of significant prior aging program experience, to work in settings where

they can serve as trainees in managerial or administrative positions. It is hoped that training experience will result in either the permanent placement of the individual as a manager, supervisor or administrator in the host organization providing the training experience, or will equip participants in the program to be hired in comparable positions by other agencies or institutions upon completion of the training experience. Trainee selection should be based upon a strong commitment to work in the field of aging.

Applicants should seek commitments from host agencies which are willing to provide a varied work experience with ample opportunity for the trainee(s) to assume a managerial role. Placement in State and Area Agencies on Aging is strongly encouraged. Trainees should be given on-the-job instruction, support, counseling, and feedback about work performance. The grantee organization under this priority area must be in a position to provide administrative support to trainees and host institutions, on site monitoring of the work experience on a periodic basis and assistance in the placement of trainees once the training experience is completed.

Applications should contain information about the host agencies, procedures for selecting and recruiting trainees, a description of the traineeship itself and information about training and supervision associated with the traineeship. Applicants must include (1) a plan for assuring placement of trainees in a management or administrative position in an organization which serves older persons upon completion of the training program and (2) an evaluation component for tracking the progress of the trainees' advancement to management positions and in carrying out their managerial responsibilities. Stipends provided under this priority area are expected to be commensurate with the cost of living in a particular geographic area and the qualifications and experience of a particular trainee. Applicants should endeavor to obtain other financial support for the trainee program. Host agency cost sharing is strongly encouraged.

AoA expects to fund approximately four projects under this priority area with a Federal share of approximately \$125,000 per project, and an estimated project duration of approximately 17 months.

#### 3.4 Improving the Supply of Paraprofessional Home Care Workers

Among the challenges that the National Eldercare Campaign faces in attempting to stimulate the expansion of

home and community services for the at-risk elderly is the need to increase and improve the supply of paraprofessional home care workers.

Because of expected growth of the at-risk older population between now and the year 2000, the Bureau of Labor Statistics is projecting that home care paraprofessionals, such as homemakers and home health aides, will become the third fastest growing occupational category over the next ten years. Nationally, home care providers are averaging a 60% turnover rate per year among paraprofessional home care workers and many States are now reporting serious workforce shortages. As the need for in home care expands, there is growing concern about how to both provide a sufficient number of in-home workers and assure that the services they provide are of high quality.

The purpose of this priority area is to demonstrate innovative, collaborative approaches for increasing and improving the supply of paraprofessional home care workers. The expected outcome is to develop and disseminate several model approaches which State Agencies on Aging, Area Agencies on Aging and others may use to promote the provision of in home services for the at-risk elderly, especially through State and local eldercare coalitions around the country.

Applicants are encouraged to develop collaborative efforts with all the major parties concerned with improving the supply of qualified paraprofessional home care workers, e.g., aging network agencies, community college and vocational training institutions, employment and training programs, and health care provider coalitions.

Applicants also are encouraged to demonstrate as many program elements as possible to maximize the impact of the project. These may include:

- Improving the training and supervision offered to workers;
- Developing improved and alternative wage and benefit packages;
- Strengthening the understanding of possible cultural differences between workers and their clients;
- Stabilizing work hours;
- Developing alternative approaches to restrictive task and job requirements;
- Establishing career paths within and beyond the home care industry; and
- Improving public understanding about the vital role in home workers fill.

Proposals should be based on knowledge of: (1) Existing State and local programs whose operation depends significantly on the availability and use of in home workers; (2) the results of pertinent AoA and other

agency supported research and demonstration projects, and; (3) approaches utilized by the private sector. Wherever possible, proposals should build upon successfully tested policies, procedures and materials and not duplicate existing efforts. Applicants may contact the National Aging Resource Center on Long Term Care at Brandeis University (1-800-456-9966) for more information about recent activities that address the supply of in home workers.

Proposals should contain an evaluation component that effectively measures project outcomes for all proposed program elements and the impact of the project on improving worker supply and quality of patient care. They also should include a nationwide effort to disseminate practical project results and program recommendations to State and Area Agencies on Aging and other relevant public and private agencies and organizations.

All State and Area Agencies on Aging and public and private non-profit organizations, institutions and agencies are eligible to submit an application under this priority area. Because the priority area has great interest to the aging network, all applications must provide clear evidence of consultations with the leadership of appropriate State and Area Agency(ies) on Aging in the development of the proposal.

AoA expects to fund approximately five (5) projects under this priority area, with a Federal share of approximately \$100,000 per project and a project duration of approximately 17 months.

#### 4. Greater Advocacy by National Aging Organizations for Older Persons at Risk

As stated in part I above, the Administration on Aging (AoA) has launched a National Eldercare Campaign which is a nationwide, multi-year effort to mobilize resources for home and community-based care for older persons at risk of losing their independence. Such persons include those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. At special risk are the poor, women, residents of rural areas, and minority individuals.

The intent of this priority area is to involve national aging organizations significantly in the National Eldercare Campaign, with an emphasis on new initiatives designed to address the home and community-based care needs of older persons at risk and to expand public awareness relevant to the problems and issues concerning

eldercare. Therefore, applicants must demonstrate familiarity with all aspects of the Campaign and clearly state how the organization seeking funds can contribute to the overall Campaign goals and objectives. Information about the National Eldercare Campaign can be obtained by contacting AoA.

National aging organizations have successfully advocated on behalf of older persons in a number of areas including housing, employment, legal services, and health care. It is AoA's intent to build upon this track record by encouraging this network of organizations to focus its advocacy related activities on issues related to the eldercare needs of the at risk population of older people. Applications are solicited from national aging organizations that propose to develop new initiatives which give special attention to eldercare for older persons at risk. Projects should focus on innovative and non-traditional approaches to greater advocacy on behalf of this population and such projects should, where appropriate, heighten visibility of the issues related to the eldercare needs of vulnerable older persons.

Activities to be undertaken should include, but are not limited to: (1) Efforts to open or expand a dialogue on aging with other organizations such as religious institutions, academia, business, labor, fraternal, civic and professional organizations and associations; (2) undertaking public awareness campaigns through appropriate use of the media, and; (3) working with eldercare coalitions to gain greater leverage for the advocacy effort. Activities supported under this priority area are to be new initiatives, above and beyond what the organization is already doing. Applicants should describe current activities that may be related to the National Eldercare Campaign and how their proposed activities present a significant departure from past work.

Eligibility to apply for funds under this priority area is limited to national aging organizations. AoA intends to support approximately eight (8) projects at a level of approximately \$100,000 per project for a period of approximately 17 months. The applicant must, at a minimum, match the Federal share of project costs. Thus, this priority area requires a grantee share of at least 50% of total project costs.

##### 5. Enhancement of Dissemination and Utilization of Information on Aging

The purpose of the Title IV Research, Demonstration, and Training Program is to provide results, products, and

findings which can be used by all those in the field of aging to help older people. Dissemination is the key to appropriate utilization. A recent study suggested that while Title IV dissemination is having a positive impact, a more comprehensive dissemination strategy is needed. The purpose of this priority area is to develop and implement a comprehensive and cooperative approach (involving the awardee, AoA, and others in the field of aging) to improving the dissemination and utilization of Title IV results, products, and findings in a manner which will increase their usefulness to State and Area Agencies on Aging as well as others in the field of aging.

Current interest centers not only on the dissemination and utilization of Title IV project findings, products, and results. An even larger issue, which cuts across the entire field of aging, is how to bridge the gaps between research, demonstration, training, and practice. The central questions which need to be resolved are:

- How can dissemination and utilization be built into research, demonstration, training, and development projects from the very outset?
- How can we assure that support for dissemination activities is related to the quality of the material to be disseminated?
- How can the potential for utilization be included as a consideration in discretionary grants planning and review?
- What practical and feasible dissemination and utilization efforts can Federal, State, foundation, and other funding agencies in the field of aging undertake, singly and jointly, to transfer knowledge into program policy and practice?
- AoA is interested in funding one (1) project which will address these issues. Applicants should propose a comprehensive approach, including both strategy development and implementation, which will include, but is not limited to, the following components:
  - Review current dissemination and utilization strategies and activities and suggest improvements covering, for example, more effective techniques for incorporating dissemination into all stages of the projects, rather than at their completion;
  - Evaluate the utilization of a sample of completed projects including such factors of how utilization correlated with the effectiveness of dissemination activities;
  - Provide advice and assistance to funded projects on how to improve

project dissemination and support activities such as work in progress sessions to increase joint dissemination activities by related grantees;

- Develop and implement a systematic evaluation process for the products, results, and findings of Title IV projects including review of promising products by experts and potential users in the aging network and others in the field of aging;
- Identify, and implement a variety of dissemination techniques (with particular attention to use of technology to assist in dissemination and utilization) for use with materials which are found to have the potential for use by those serving older people. Some possible techniques include computer bulletin boards, teleconferencing, and CD Rom distributions;

The following features will characterize this project:

- This award will be made as a cooperative agreement. The statutory authority under which AoA awards cooperative agreements is found in Title II and Title IV of the Older Americans Act as amended (42 U.S.C. 3001 *et seq.*);
- An Advisory Committee will be established to ensure that the organization will be responsive to the needs of the aging network;
- An evaluation process will be developed and implemented to ensure that systematic, objective information is available about the utilization and effectiveness of the products of this project. Specific outcomes must be built into the project for evaluation. The evaluation should be performed by an *independent* evaluator; and
- The organization receiving the award will not be conducting this project on behalf of AoA. However, AoA and the awardee will work cooperatively in the development and implementation of the project's agenda as described below.

Under the cooperative agreement mechanism, AoA and the awardee will share the responsibility for managing this project. The awardee will have the primary responsibility for developing and implementing the activities of the project. AoA will jointly participate with the awardee in such activities as clarifying the specific issue areas to be addressed, through periodic briefings and ongoing consultation—sharing with the awardee its knowledge of the issues being addressed by past and current projects, providing feedback to the awardee about the usefulness to the field of its written products and information sharing activities, and participating as much as possible in the deliberations of the project's advisory

committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

AoA expects to fund one project under this priority area, with an approximate total Federal share of \$300,000 per year for an estimated duration of approximately 36 months.

#### 6. National Academy on Aging

The Administration on Aging is soliciting proposals for the creation of a National Academy on Aging. The Academy will bring together leaders in American society to discuss and debate emerging trends and issues, as well as strategies regarding how they and their organizations can better address the challenges of an aging society.

Leaders and decision makers are constantly facing, directly or indirectly, the growth and change in the nation's older population. Our country's leadership at all levels—from public, private, and voluntary sectors alike—will have to become more knowledgeable about the transformations now taking place toward an aging society and be in a position to provide wise and timely decisions affecting the elderly. Decision makers will be especially challenged by the growing numbers of older persons at risk. These vulnerable older persons, whose continued independence depends upon adequate and accessible home and community based services, are the focus of the AoA National Eldercare Campaign described earlier in this document.

The goals of the Academy are to encourage greater national leadership in aging issues through the clarification of critical issues in the field of aging for analysis and discussion by those participating in Academy sponsored programs. The Academy is to promote discussion of nationwide approaches to these issues for the use and benefit of the Academy participants. Participants in Academy events should be better informed and equipped to advocate for the needs of the elderly.

Applications should include plans for curricula development and for the conduct of symposia, seminars, public forums, research, and analysis relative to emerging national issues on aging. The program design should encourage the exchange of ideas and information that will encourage creativity and innovation in programs and methods for meeting the needs of the elderly. Attention should be devoted to bringing together participants with diverse points of view.

Participants in the program activities developed by the Academy should be drawn from aging as well as non-aging organizations, from both the private and public sectors. They should, however, share both an interest in aging issues and a capacity for shaping future aging programs and policies. Participants from the field of aging may include executives of State and Area Agencies on Aging, leaders in service provision, executives of national aging organizations, as well as researchers, educators, and others in the field of aging. Participants drawn from outside the field of aging are expected to be composed of individuals with an impact on and interest in eldercare issues and the needs of older persons at risk. This second group includes subject matter and policy area experts, business leaders, executives from national organizations (non-aging), and leaders of public and voluntary agencies, elected and appointed public officials, labor unions, religious bodies, civic groups, and educational institutions. Through the programs offered by the Academy, these leaders will gain an enriched, more comprehensive understanding of the elderly and the challenges of shaping national, State, community, and organizational responses to their needs.

Applicants for the National Academy on Aging award must be qualified to provide a level of knowledge and information synthesis appropriate to the high ranking officials for whom the Academy is planned. The applicant should propose a faculty of experts in aging-related matters with particular knowledge in a variety of topic areas. It should set forth a plan to undertake a range of activities tailored to the distinct needs of its participants. In particular, it should describe how the Academy program will assist decision makers whose organizations are part of the National Eldercare Campaign for older persons at risk. In that regard, the Academy will be expected to coordinate its curriculum and program, as appropriate, with the work being undertaken by the AoA supported National Eldercare Institutes.

Other features of the Academy include the following:

- The applicant selected will be awarded a Cooperative Agreement for a three-year project period.
- AoA and the organization selected to serve as the National Academy on Aging will work cooperatively in the development of the Academy's agenda. The Academy will not conduct its activities on behalf of AoA but on a cooperative basis with AoA as described below.

- The National Academy on Aging shall have its own organizational identity within the structure of the performing organizations.

- The National Academy on Aging shall have a Director with an appropriate background who will devote full time to this position. Appropriately qualified individuals shall be appointed to the Academy's faculty.

- An Advisory Committee will be established to ensure that the Academy is responsive to the needs of those participating in its activities.

AoA expects to fund one cooperative agreement under this priority area with a Federal share of approximately \$300,000 per year for a project duration of approximately three years. Initially, AoA funds will support in whole or in part the administration of the Academy, the cost of conducting core activities, including educational programs and living expenses of those attending. As the Academy becomes more established, it is anticipated that the agencies sponsoring the participants will bear a larger portion of the costs.

Under the cooperative agreement mechanism AoA and the awardee organization will share the responsibility for managing the Academy. The awardee organization will have the primary responsibility for developing and implementing the activities of the Academy. AoA will jointly participate with the Academy in such activities as clarifying the specific issues and audiences to be addressed by the Academy, through periodic briefings and ongoing consultation—sharing with the Academy its knowledge of the issues being addressed by the Academy as well as information about relevant activities being undertaken by others, providing feedback to the Academy about the usefulness to the field of its programs, and participating as much as possible in the deliberations of the Academy's advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

#### Part III. Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. General guidelines on applicant eligibility are provided in part I. Specific eligibility guidelines are

provided in part II under certain priority areas.

#### A. General Information

##### 1. Review Process and Considerations for Funding

Within the limits of available Federal funds, the Administration on Aging (AoA) makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this announcement. The following steps are involved in the review process.

*a. Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

*b. Screening:* To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in section D below, will not be reviewed and will receive no further consideration for funding.

*c. Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section F, below, by review panels consisting of qualified persons from outside the Federal government and knowledgeable non-AoA Federal Government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

*d. Other Comments:* AoA solicits comments from other Federal Departments, State Agencies on Aging, interested foundations, national organizations, specialists, experts, and others. These comments are considered by the Commissioner on Aging in making funding decisions.

*e. Other Considerations:* In making funding award decisions, AoA will pay particular attention to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions will also reflect the equitable distribution of assistance among geographical areas of the nation, and rural and urban areas. The Commissioner on Aging also guards against wasteful duplication of effort in making funding decisions.

*f. Other Funding Sources:* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

*g. Decision-Making Process:* After the panel review sessions, applicants may

be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3-785).

*h. Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be several months in duration. This length of time is required to review and process grant applications.

##### 2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

#### B. Deadline for Submission of Applications

The closing date for submission of applications is August 9, 1991. Applications must be either sent or hand-delivered to the address specified in section D, below. Hand-delivered applications are accepted during the normal working hours of 9 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or
2. Sent before midnight of the deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by chapter 1-62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadline are considered late applications. The Acquisition and Assistance Management Branch will notify each late applicant that its application will not be considered in the current competition.

AoA may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when AoA determines an extension to be in the best interest of the government. However, if AoA does not extend the deadline for all applicants, it

may not waive or extend the deadline for any applicant(s).

#### C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share must equal at least 25% of the entire project cost. (Except for Priority Area 4 which requires, at a minimum, a 50% non-Federal Share.) Applicants should note that, among applications of comparable technical merit, the greater the non-Federal share the more favorable the application is likely to be considered.

The one exception to this cost sharing formula is for applications originating from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95-134, as amended, which requires the Department to waive "any requirement for local matching funds under \$200,000."

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred direct or indirect costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under Federal rules established, as appropriate, by OMB Circulars A-21, A-87, and A-122. If the required non-Federal share is not met by a funded project, AoA will disallow any unmatched Federal dollars. A frequent error is to match 25% of the Federal share rather than 25% of the entire project cost. Applicants should be sure that they have met the match requirement before submitting their budgets.

#### D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will not be reviewed and will receive no further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must not exceed forty-five (45) pages, double-spaced, exclusive of certain required forms and

assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

The following documents are excluded from the 45 page limitation: (1) Standard Forms (SF) 424, 424A (including up to a four page budget justification) and 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status; and (4) indirect cost agreements. Within the forty-five (45) page limitation, the following guidelines are suggested:

- Summary description (one page);
- Narrative (approximately thirty pages);
- Applicant's capability statement, including an organization chart, and vitae for key project personnel (approximately ten pages) and;
- Letters of commitment and cooperation (approximately four pages).

2. Applications must be either postmarked by midnight, August 9, 1991, or hand-delivered by 5:30 p.m., Eastern Time, on August 9, 1991 to:

Department of Health and Human Services,  
Grants and Contracts Management  
Division, Acquisition and Assistance  
Management Branch, 200 Independence  
Avenue, SW., Room 341F.2, Washington,  
D.C. 20201, Attn: AoA-91-3.

3. Applicants must meet any eligibility requirements specific to the priority area under which they are applying.

Under No Circumstances Will Applications That Do Not Meet These Screening Requirements Be Assigned To Reviewers.

#### *E. Funding Limitations on Indirect Costs*

1. Training projects awarded to institutions of higher education, hospitals, and other non-profit institutions, are limited to a Federal reimbursement of indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. See section J-2, item 6j.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. Applicants who do not have a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and in compliance with relevant OMB Circulars.

#### *F. Evaluation Criteria*

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations set forth in the individual priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

##### 1. Objectives and Need for Assistance: 25 points

a. Does the application pinpoint relevant economic, social, financial, institutional or other problems requiring a solution?

b. Is the need for the proposed project clearly demonstrated and supported by documentation? Are the needs of low income and minority elderly included and discussed?

c. Are the principal and subordinate objectives, functions, and activities of the project clearly stated, justified, innovative (as appropriate), and relevant to the issue/problem area?

d. Does the application include any relevant data based on planning studies in providing a thorough discussion of the current state of knowledge relevant to the proposed project?

##### 2. Results or Benefits Expected: 20 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are important anticipated contributions to policy, practice, theory and/or research clearly indicated?

b. Does the application clearly indicate how the expected results will be of direct and tangible benefit to older people? Does the application describe how its products will be disseminated to and utilized by appropriate, well-chosen audiences?

##### 3. Approach: 30 points

a. Does the application provide a sound and workable plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished?

b. Are persuasive reasons offered for taking the proposed approach as opposed to others? Does the application clearly explain the methodology for determining if the results and benefits identified are being achieved?

c. Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be

achieved? Is a time-line chart or its equivalent employed to list project activities in chronological order and show the target dates for the projected accomplishments?

d. Has the application clearly identified the kinds of data to be collected and analyzed, and discussed the criteria to be used in evaluating the success of the project?

e. Has the application identified and secured the commitment of each of the key cooperating organizations, groups, and individuals who will work on the project and provided an adequate description of the nature of their effort or contribution?

##### 4. Level of Effort: 25 points

a. Are the project management, staff resources and time commitments adequate to carry out the proposal effectively and efficiently? Is the staff chart consistent with the project plan expressed in the Approach section of the Program Narrative?

b. Are the key staff well qualified for this project? Are consultants and advisors used appropriately? If volunteers will be used, is there adequate supervision and support from project staff?

c. Does the budget justification adequately describe the resources necessary to conduct the project? Is the budget reasonable in terms of the intended results?

d. Are the authors of the proposal, their relationship with the applicant agency and their intended role in the project, if any, identified?

#### *G. The Components of an Application*

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements.

Note: The original copy of the application must have an original signature in item 18d on the SF 424.

- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Project summary description;
- Program narrative;
- Organizational capability statement and vitae;

- Letters of Commitment and Cooperation.
- A copy of the Check List of Application Requirements (See Section K, below) with all the completed items checked.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be sequentially numbered. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

#### H. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Acquisition and Assistance Management Branch by telephone at (202) 245-9016.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

#### I. Background Information and Guidance for Preparing the Application

##### 1. Current Projects and Previous Project Results

In the Program Narrative of the application (see section J below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on Current AoA Projects may be obtained by contacting the Office of Program Development at 202/619-0441.

Regarding Completed AoA Projects, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Technical Information Service (NTIS), an abstract clearinghouse and document source for Federally sponsored reports; AgeLine, a bibliographic database service sponsored by the AARP; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers:

National Technical Information Service,  
5285 Port Royal Road, Springfield, VA  
22161, (703) 487-4600.

AgeLine Database, BRS Customer  
Services, 1200 Route 7, Latham, NY  
12110, (800) 345-4277.

Acquisition Unit, Library Programs  
Service, U.S. Government Printing  
Office, North Capital and H Streets,  
NW., Washington, DC 20401, (202)  
275-1070.

##### 2. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- The most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- Dissemination starts at the beginning of a project not when it is completed;
- Potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- Dissemination is a networking process;
- At a minimum, dissemination includes getting your final products into the hands of appropriate users and making presentations at conferences; and
- Coordination with other related projects may increase the chances of your products being used.

#### J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions prescribed by the Office of Management and Budget (approved under OMB control number 0348-0043) is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. (The narrative guidance and checklist reporting form are approved under OMB control number 0937-0189). Wherever possible, we have attempted to provide clarification. If you encounter a problem in completing the application, please call (202) 619-0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this **Federal Register** announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the **Federal Register** announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of these forms have been provided as part of this announcement. These samples are to be used as a guide only. Please submit your application on the blank copies. When specific information is not required under this program, N/A (not applicable) has been preprinted on the form.

Please prepare your application consistent with the following guidance:

##### 1. SF 424, Cover Page:

Complete only the items specified in the following instructions:

*Top Left of Page.* In the box provided, enter the number of the priority area under which the application is being submitted.

*Item 1.* Preprinted on the form.

*Item 2.* Fill in the date you submitted the application. Leave the applicant identifier box blank.

*Item 3.* Not applicable.

*Item 4.* Leave blank.

*Item 5.* Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, applicant address, and name and telephone number of the person to contact on matters related to this application.

*Item 6.* Enter the employer identification number (EIN) of the

applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

*Item 7.* Enter the appropriate letter in the box provided.

*Item 8.* Preprinted on form.

*Item 9.* Preprinted on form.

*Item 10.* Preprinted on form.

*Item 11.* The title should describe concisely the nature of the project. It should not exceed 10 to 12 words and 120 characters including spaces and punctuation. It should not repeat the title of the priority area or the name of the applicant institution.

*Item 12.* Not applicable.

*Item 13.* Enter the desired start date for the project, beginning on or after September 1, 1991 and the desired end date for the project. Projects are generally 12 to 36 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

*Item 14.* List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

*Item 15.* All budget information entered under item #15 should cover: (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months. The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b-15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c-15e, as applicable. It is important that the dollar amounts entered in sub-items 15b-15e total at least 25 percent of the total project cost (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

*Check:* Does all information entered in Items 15a to 15f cover: (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months?

*Item 16.* Preprinted on form.

*Item 17.* This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

*Item 18.* To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

## 2. SF 424A—Budget Information

This form is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item blocks

are superfluous and have been marked not applicable (N.A.). The applicant should consider and respond to only the budget items for which guidance is provided below. Sections A, B, and C should include the Federal as well as non-Federal funding for the proposed project covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months.

### Section A—Budget Summary

This section includes a summary of the budget. On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

### Section B—Budget Categories

Under column (5) enter the total requirements for funds (both Federal and non-Federal) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

*Line 6a—Personnel:* Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h - Other.

*Justification:* Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

*Line 6b—Fringe Benefits:* Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Line 6c—Travel:* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

*Justification:* Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Line 6d—Equipment:* Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of \$5,000 or more per unit. For all other

grantees, the threshold for equipment is \$500 or more per unit.

*Justification:* Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

*Line 6e—Supplies:* Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

*Line 6f—Contractual:* Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance.

Do not include payments to individuals on this line.

*Justification:* Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate all or part of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

*Line 6g—Construction:* Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

*Line 6h—Other:* Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

*Line 6i—Total Direct Charges:* Show the totals of Lines 6a through 6h.

*Line 6j—Indirect Charges:* Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested,

enter "none." Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) the applicant is a State or local government agency.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in 45 CFR part 74), Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the Federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a\*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b\*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b\* from a\*. The remainder is what the applicant can claim as part of its matching cost contribution.

**Line 6k—Total:** Enter the total amounts of Lines 6i and 6j.

**Line 7—Program Income:** Estimate the amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and expected use of income in the Level of Effort section of the Program Narrative.

#### Section C—Non-Federal Resources

**Line 12—Totals:** Enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

#### Section D—Forecasted Cash Needs

Not applicable.

#### Section E—Budget Estimate of Federal Funds Needed for Balance of the Project

This section should be completed only if the total project period exceeds 17 months.

**Line 20—Totals:** Enter the estimated required Federal funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and, if applicable, for months 25 through 36 under "(c) Second."

#### Section F—Other Budget Information

**Line 21—Direct Charges:** Not applicable.

**Line 22—Indirect Charges:** Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

**Line 23—Remarks:** Provide any other explanations or comments deemed necessary.

#### 3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496-7041.

#### 4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

#### 5. Project Summary Description

On a separate page, provide a project summary description headed by two identifiers: (1) the name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project "abstract" which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

#### 6. Program Narrative

The Program Narrative is the most important part of the application. It should be clear, concise, and pertinent to the priority area under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in section F above. The format of the narrative should, in fact, parallel the criteria, beginning with a discussion of (a) the project's objectives and the need for assistance; leading to an account of (b) the results/benefits that you expect the project to accomplish; followed by a detailed explanation of (c) the approach(es) the project would take to achieve its objectives; and ending with (d) the level of effort the project would undertake, in terms of staff, funding, and other resources.

Please have the narrative typed on one side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should conclude by identifying the author(s) of the proposal, their relationship with the applicant,

and the role they will play, if any, should the project be funded.

#### 7. Organizational Capability Statement and Vitae for Key Project Personnel

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its track record for preparing cogent and useful reports, publications, and other products. An organization chart showing the relationship of the project to the current organization should be included.

Vitae should be included for key project staff only.

#### K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for use in ensuring proper preparation of your application.

#### CHECKLIST

I have checked my application package to ensure that it includes or is in accord with the following:

- One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
- SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;

- SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
- The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;
- As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;
- Proof of nonprofit status, as necessary;
- Summary description;
- Program narrative;
- Organizational capability statement and vitae for key personnel;
- Letters of commitment and cooperation, as appropriate.

#### L. Points to Remember

1. There is a forty-five (45) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in section D.
2. You are required to send an original and two copies of an application.
3. Designate a priority area in the box provided at the top left hand corner of the SF 424.
4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.
5. To meet the cost sharing requirement (see section C above), you must, at a minimum, match \$1 for every \$3 requested in Federal funding to reach 25% of the total project cost (the Federal share plus your cost share). For example, if your request for Federal funds is \$90,000, then the required minimum match or cost sharing is \$30,000. The total project cost is

\$120,000, of which your \$30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

8. Do not include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one application is submitted, each should be submitted under separate cover.

11. Before submitting the application, have someone other than the author(s): (1) Apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

12. Applications must be mailed by midnight, or hand delivered (by 5:30 p.m., Eastern Time), by August 9, 1991 to: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., room 341F.2, Washington, DC 20201, Attn: AoA-91-3.

Dated: June 24, 1991.

Joyce T. Berry,

U.S. Commissioner on Aging, Administration on Aging.

BILLING CODE 4130-01-M



MB Approval No. 0348-0044

### BUDGET INFORMATION — Non-Construction Programs

#### SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

#### SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks					

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**APPLICATION FOR FEDERAL ASSISTANCE**

7.7	1. DATE SUBMITTED May 23, 1991	Applicant Identifier Not Applicable (N/A)
1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction	3. DATE RECEIVED BY STATE N/A	State Application Identifier N/A
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		

**2. APPLICANT INFORMATION**

Legal Name: ABC Organization	Organizational Unit: Division on Aging
Address (give city, county, state, and zip code): 1234 Jones Avenue Smithville, Kansas	Name and telephone number of the person to be contacted on matters involving this application (give area code): John Doe (456) 789-0123

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

1	2	-	3	4	5	6	7	8	9
---	---	---	---	---	---	---	---	---	---

7. TYPE OF APPLICANT: (enter appropriate letter in box)  N

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Public Organization
G. Special District	N. Other (Specify)

8. TYPE OF APPLICATION:

New     Continuation     Revision

9. Reason, enter appropriate letter(s) in box(es):

A. Increase Award    B. Decrease Award    C. Increase Duration  
D. Decrease Duration    Other (specify):

8. NAME OF FEDERAL AGENCY:  
Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 - 6 6 6

TITLE: Special Programs for the Aging-Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:  
Improved Services to At-Risk Elderly

12. AREAS AFFECTED BY PROJECT (give counties, states, etc.):  
Nation-wide applicability

13. PROPOSED PROJECT:

Start Date	Ending Date	a. Applicant
09/30/91	09/29/92	4

14. CONGRESSIONAL DISTRICTS OF:

b. Project: 1-5

15. ESTIMATED FUNDING:

a. Federal	\$ 75,000	.00
b. Applicant	\$ 25,000	.00
c. State	\$	.00
d. Local	\$	.00
e. Other	\$	.00
f. Program Income	\$	.00
g. TOTAL	\$ 100,000	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE \_\_\_\_\_

b. NO  PROGRAM IS NOT COVERED BY E.O. 12372  
 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative Jane Roe	b. Title Executive Director	c. Telephone number (555) 666-7777
d. Signature of Authorized Representative	e. Date Signed 05/20/91	

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**BUDGET INFORMATION -- Non-Construction Programs**

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1. N.A.	N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
2. N.A.	N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
3. N.A.	N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
4. N.A.	N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
5. TOTALS	93,668	\$ N.A.	\$ N.A.	\$ 75,000	\$ 25,000	\$ 100,000

**SECTION B - BUDGET CATEGORIES**

Object Class Categories	PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 50,000
b. Fringe Benefits	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 15,000
c. Travel	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 4,000
d. Equipment	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 1,000
e. Supplies	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 2,000
f. Contractual	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 3,000
g. Construction	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
h. Other	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 10,000
i. Total Direct Charges (sum of 6a - 6h)	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 85,000
j. Indirect Charges	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 15,000
k. TOTALS (sum of 6i and 6j)	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ 100,000
7. Program Income	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.

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**SECTION C - NON-FEDERAL RESOURCES**

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
9. N.A.	N.A.	N.A.	N.A.	N.A.
10. N.A.	N.A.	N.A.	N.A.	N.A.
11. N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)	\$ 25,000	\$	\$	\$ 25,000

**SECTION D - FORECASTED CASH NEEDS**

To: (Specify Year)	1991 Quarter				4th Quarter
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
13. Federal	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
14. Nonfederal	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14)	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

(a) Grant Program	FUTURE FUNDING PERIODS (Year)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. N.A.	\$ N.A.	\$ N.A.	\$ N.A.	\$ N.A.
17. N.A.	N.A.	N.A.	N.A.	N.A.
18. N.A.	N.A.	N.A.	N.A.	N.A.
19. N.A.	N.A.	N.A.	N.A.	N.A.
20. TOTALS (sum of lines 16-19)	\$ 100,000	\$	\$ N.A.	\$ N.A.

**SECTION F - OTHER BUDGET INFORMATION**  
(Attach additional Sheets if Necessary)

21. Direct Charges:	N.A.	22. Indirect Charges:	
23. Remarks			

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**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

## Certification Regarding Lobbying

Certification for Contracts, Grants, Loans,  
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization

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Authorized Signature	Title	Date
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NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and  
Voluntary Exclusion - Lower Tier Covered Transactions  
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**U.S. Department of Health and Human Services**  
**Certification Regarding Drug-Free Workplace Requirements**  
**Grantees Other Than Individuals**

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

*(Continued on reverse side of this sheet)*

**HHS—Certification Regarding Drug-Free Workplace Requirements—continued from reverse page**

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) \_\_\_\_\_

Check  if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Title \_\_\_\_\_  
 Organization \_\_\_\_\_

DGMO Form#2 Revised May 1990

## Centers for Disease Control

### Availability of DCD Bacterial Isolates for Evaluating Antimicrobial Susceptibility Testing Devices

**AGENCY:** Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** CDC bacterial isolates for quality control of antimicrobial susceptibility testing devices are available. Charges are listed under supplementary information.

**EFFECTIVE DATE:** June 15, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Fred C. Tenover, Ph.D., or Carolyn Baker, Antimicrobics Investigation Branch, Center for Infectious Diseases (C07), CDC, Atlanta, GA 30333. Telephone: FTS: 236-3246, Commercial: (404) 639-3246.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the availability from CDC of two sets of bacterial isolates, one set of gram-positive organisms and one set of gram-negative organisms, of known antimicrobial susceptibility patterns. These organisms could be used by manufacturers to fulfill the requirements for testing antimicrobial susceptibility testing devices as part of Food and Drug Administration 510(k) or pre-market approval (PMA) submissions.

The charge for the set of 100 gram-positive organisms will be \$1500.00, and the charge for the set of 200 gram-negative organisms will be \$2500.00. These charges were derived from the cost of materials and labor required by CDC to acquire, test, maintain, and prepare each set for shipment. The gram-positive set is currently available. The gram-negative set will be available as of June 28, 1991.

These sets can be obtained by writing to Connie Flowers, Scientific Resources Program, Technical Services Branch (C21), Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Orders may also be sent by facsimile (FAX) to (404) 639-3037. Telephone orders will not be accepted. The catalog number for the gram-positive set is GPO100; the number for the gram-negative set is GNO250. No individual organisms or partial sets will be made available. The sets will be sent frozen on dry ice by overnight express shipping.

Orders for sets should include the purchase order number, catalog number, the name and account number of the company's overnight express shipping service, the name and telephone number of the contact person who will receive

the isolates, and the company's shipping and billing address. The materials will be provided only after the company executes a Non-disclosure Agreement which will be provided by CDC once the order has been made. Companies will be billed the month after the isolates are shipped.

Disk diffusion and broth microdilution susceptibility testing results will be sent with the sets, and agar dilution results will follow.

Dated: June 21, 1991.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 91-15403 Filed 6-27-91; 8:45 am]

**BILLING CODE 4160-18-M**

### [Announcement Number 162]

### A Cooperative Agreement Demonstration Project to Determine the Morbidity and Mortality After Measles Vaccine Administered at Six Months of Age

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds for research concerning morbidity and mortality following administration of high-dose Edmonston-Zagreb (EZ) and Schwarz vaccines administered at 6 months of age.

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 to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

#### Authority

This program is authorized under the Public Health Service Act, sections 301 [42 U.S.C. 241] and 317K [42 U.S.C. 247b(k)], as amended.

#### Eligible Applicant

The Ministry of Health, Mexico, alone has data on an existing cohort of children who received different doses of EZ and Schwarz measles vaccines 4 years ago which meets the needs of this proposed program. The necessary relationships with the Mexican government and local health systems are in place. Qualified epidemiologists have worked with CDC and with the study participants. These pre-existing conditions ensure the most timely and cost-effective start up of the proposed

project. Assistance will only be provided to the Ministry of Health, Mexico. No other applications are solicited or will be accepted.

#### Availability of Funds and Project Period

Approximately \$60,000 is available in Fiscal Year 1991 to fund one award. It is expected that award will begin on or about September 1, 1991, for one 12-month budget period within a 1-year project period. Funding estimates may vary and are subject to change.

#### Purpose

As a result of the studies in West Africa, this program is proposed to follow up on children to determine differences in mortality or other indicators between children who received the EZ and Schwarz vaccines and children who were not vaccinated before the age of 1 year.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A, below, and CDC will be responsible for conducting activities under B, below.

#### A. Recipient Activities

1. Develop a protocol to assess the mortality and severe morbidity in all children who were enrolled in 1987 measles vaccine study and persistence of antibody as a subsample.
2. Implement the protocol.
3. Collaborate with CDC in analysis and publication of the results.

#### B. Centers for Disease Control Activities

1. Collaborate in protocol development and study design.
2. Assist in monitoring the collection of data.
3. Collaborate in data entry, analysis and publication of results.

#### Evaluation Criteria

The application will be reviewed and evaluated according to the following major criteria (Maximum 100 points):

- A. The extent to which the proposed objectives are measurable, specific and related to the required recipient activities and program purpose. (40 points)
- B. The quality of the plan for conducting program activities and the potential effectiveness of the proposed methods in meeting its objectives. (50 points)
- C. The qualifications of the project personnel and evidence of their

experience in related activities. (10 points)

In addition, consideration will also be given to the extent that the budget request is clearly justified and consistent with the intended use of the funds (no weight).

#### Other Requirements

##### A. Confidentiality

All information obtained on any person by any program that is acting with funds awarded through this cooperative agreement shall not be disclosed unless that person provides written consent. Information may be released only as necessary to provide services to that person or as may be required by a law of Mexico or a political subdivision of Mexico. Information derived from any such program may be disclosed (a) in summary, statistical, or similar form that maintains the person's anonymity, or (b) for clinical or research purposes, but only if the persons who received diagnoses or care under such programs are not identified. The recipient of CDC funds that must obtain and retain identifying information as a part of the CDC-approved work plan must: (a) Maintain the physical security of such records and information at all times; (b) have procedures in place and staff trained to prevent unauthorized disclosures of client identifiers; (c) obtain informed consent by explaining the possible risk of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure; and (d) provide written assurance to this effect. The applicant must have in place systems to ensure the confidentiality of all patient records at each study site.

##### B. Human Subjects

This project, which involves human subjects, will not be awarded until an acceptable assurance has been given that the human subjects protocol will be subject to initial and continuing review by an appropriate institutional committee(s) as described in 45 CFR part 46.

#### E.O. 12372 Review

The application for this program is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.185, Immunization Research, Demonstration, Public Information, and Education-Education, Training, and Clinical Skills Improvement Projects.

#### Application Submission and Deadline

The original and two copies of the application (PHS Form 5161-1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, on or before August 1, 1991.

##### A. Deadline

The application shall be considered as meeting the deadline if it is either:

1. Received on or before the deadline date, or
2. Sent on or before the deadline date and received in time for submission to the independent review group. The applicant must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier or postal service. Private metered postmarks shall not be accepted as proof of timely mailing.

##### B. Late Application

An application which does not meet the criteria in A.1 or A.2 above is considered a late application. A late application will not be considered and will be returned to the applicant.

#### Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, please reference announcement number 162 and contact the following:

Business management technical assistance: Eddie L. Wilder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA, 30305, telephone (404) 842-6640.

Programmatic technical assistance: Lauri E. Markowitz, M.D., Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1864.

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) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: June 24, 1991.

**Ladene H. Newton,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 91-15404 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-18-M

#### National Institutes of Health

#### Lung Biology and Pathology Study Section; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Director, National Institutes of Health (NIH), announces the establishment of the Lung Biology and Pathology Study Section.

The Lung Biology and Pathology Study Section will provide review of research concerned with physiology, pathology, and immunology of the pulmonary system with a focus on the airways, pulmonary vascular system, interstitium, immune system, and lung fluids, and using cellular, biochemical, molecular biological, and immunological approaches to normal and pathological processes.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: June 20, 1991.

**Bernadine Healy,**

*Director, National Institutes of Health.*

[FR Doc. 91-15391 Filed 6-27-91; 8:45 am]

BILLING CODE 4140-01-M

#### National Institute of Diabetes and Digestive and Kidney Diseases; Meeting

Notice is hereby given of a change in the meeting of the National Digestive Diseases Advisory Board on July 22, 1991, Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032, which was published in the Federal Register on May 31 (56 FR 24827).

The conference on liver transplantation will not be held. The meeting which will be open to the public, is being held to discuss the Board's activities and will focus specifically on somatic gene therapy and digestive diseases.

Dated: June 20, 1991.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 91-15392 Filed 6-27-91; 8:45 am]

BILLING CODE 4140-01-M

**Public Health Service**

**Agency Forms Submitted to the Office of Management and Budget for Clearance**

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on June 21, 1991. (Call PHS Reports Clearance Officer on 202-245-2100 for copies of request)

1. **Intraocular Lens (IOL) Investigational Device Exemption Application (21 CFR part 813)—0910-0067—The Intraocular Lens Investigational Device Exemption Application** exempts devices from several provisions of the Federal Food, Drug and Cosmetic Act. The application contains information necessary to evaluate potential and continuing safety of the lenses during the investigational stage. Respondents: Businesses or other for-profit; Small businesses or organizations.

	Number of respondents	Number of responses per respondent	Number of hours per response
Reporting.....	18	35	23.12
Recordkeeping.....	18	1	80

Estimated Annual Burden..... 16,920 hours

2. **Employee Vital Status Letter—0920-0035—The Vital Status Letter** is sent to members of retrospective studies to determine if an employee who was exposed to a toxic substance in the workplace that is suspected of causing long-term adverse health effects is deceased or alive. This letter is used as a last resort, after all other methods have been exhausted. Respondents: Individuals or households; Number of Respondents: 252; Number of Responses Per Respondent: 1; Average Burden per Response: .167 hour; Estimated Annual Burden: 42 hours.

3. **Indian Health Service Loan Repayment Program—New—** Respondents are health professionals applying to the Indian Health Service (IHS) Loan Repayment Program (LRP). The application provides information on training status in compliance with program requirements. Respondents: Individuals or households, State or local governments, Businesses or other for profit.

	Number of respondents	Number of responses per respondent	Number of hours per response
Applicant.....	1,200	1	1.5
Lender.....	1,600	1	.25

Estimated Annual Burden..... 2,200 hours

*OMB Desk Officer:* Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: June 21, 1991.  
**Sandra K. Mahkorn,**  
*Deputy Assistant Secretary for Public Health Policy.*  
 [FR Doc. 91-15333 Filed 6-27-91; 8:45 am]  
**BILLING CODE 4160-17-M**

**Secretary's Council on Health Promotion and Disease Prevention Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Wednesday, July 24, 1991.

*Name:* Secretary's Council on Health Promotion and Disease Prevention.  
*Date and Time:* July 24, 1991, 9 AM to 5 PM; United Way of America, Board Room, 701 North Fairfax Street, Alexandria, Virginia 22314-2045.

Open, except for working lunch.  
*Purpose:* The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

*Agenda:* This will be the eighth meeting of the Secretary's Council. the theme of this meeting is "Innovations in Health Education and Health Information Systems."

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, PhD., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.  
**James A. Harrell,**  
*Deputy Director, Office of Disease Prevention and Health Promotion.*  
 [FR Doc. 91-15435 Filed 6-27-91; 8:45 am]  
**BILLING CODE 4160-17-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Assistant Secretary for Public and Indian Housing**

[Docket No. N-91-3236; FR-2952-N-03]

**Clarification to FY 91 Notice of Fund Availability (NOFA), Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Clarification of published Notice of Fund Availability (NOFA).

**SUMMARY:** This notice clarifies the procedure for the correction of deficient applications submitted in response to the NOFA announcing FY 1991 funding for public housing development and for the Major Reconstruction of Obsolete Projects (MROP).

**FOR FURTHER INFORMATION CONTACT:** The HUD Field Office for the PHA's jurisdiction.

**SUPPLEMENTARY INFORMATION:** On March 29, 1991 (56 FR 13246), the Department published a notice in the Federal Register announcing the availability of FY 1991 funding for public housing development and for the Major Reconstruction of Obsolete Projects (MROP), and invited eligible Public Housing Agencies (PHAs) to submit applications. Paragraph 2b contained a submission checklist and paragraph 2c provided a process for determining whether applications met certain eligibility thresholds and the circumstances under which missing or incomplete information could be submitted after the application submission deadline of May 28, 1991.

Some of the items included in the paragraph 2b submission checklist were asterisked, while other items were not. The significance of whether or not an item was asterisked was explained in paragraph 2c: "If items, other than those identified with an asterisk in paragraph 2b above, are missing from the application, the PHA's application will be considered substantially incomplete and, therefore, ineligible for further

processing." The intent was that non-asterisked items that were missing in their entirety from an application would serve as the basis for determining the application to be substantially incomplete and ineligible for further processing. All other items could be corrected or cured within a fourteen day period following notification from HUD, so long as they consisted of technical deficiencies related only to items that were not necessary for HUD review under the ranking factors, and the correction action did not improve the substantive quality of the application.

Recent queries have suggested that paragraph 2c of the NOFA has been interpreted in a manner inconsistent with the Department's intention, specifically with regard to the non-asterisked items in the paragraph 2b submission checklist. The intent of the NOFA is that only if non-asterisked items are wholly missing would the application be considered substantially incomplete and ineligible for further processing. The correction of technical omissions and mistakes in non-asterisked items is permissible, and non-asterisked items that are included in part, or by reference, in the application are also in the category of curable technical deficiencies subject to the 14-calendar-day correction process described in the NOFA, in the same manner as are the asterisked items in the submission checklist of paragraph 2b.

This clarification has been brought to the attention of the appropriate Field Office staff, and applications with deficiencies are being re-examined accordingly. Any additional 14-day technical deficiency letters that result from the reexamination will be expeditiously issued.

Dated: June 25, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-15483 Filed 6-27-91; 8:45 am]

BILLING CODE 4210-33-M

#### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-32]

#### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** June 28, 1991.

**ADDRESSES:** For further information, contact James N. Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing

the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including ZIP code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; Rm. 1E671, Pentagon, Washington, DC 20310-2600; (202) 693-4583; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447-3338; Corps of Engineers: Bob Swieconeck, Army Corps of Engineers, Civilian Facilities, Rm. 5136, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; FSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366-5601;

Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080. (These are not toll-free numbers.)

Dated: June 21, 1991.

**Paul Roitman Bardack,**

*Deputy Assistant Secretary for Economic Development.*

**Title V. Federal Surplus Property Program  
Federal Register Report for 06/28/91**

**SUITABLE/AVAILABLE PROPERTIES**

*Buildings (by State)*

**Florida**

Naval Reserve Center  
2610 Tigertail Avenue  
Miami, Co: Dade, FL 33133-  
Landholding Agency: GSA  
Property Number: 549120062  
Status: Excess Comment: 4600 sq. ft., 2 story,  
concrete and wood siding, most recent  
use—offices/training rooms/vehicle  
maintenance  
GSA Number: FL-P-192

**Idaho**

Bldg. 705, Ditchrider House  
Boise Project  
Notus, Co: Cayon, ID 83656-  
Location: T5N, R3W, Sec 2, SE¼, SW¼,  
SW¼  
Landholding Agency: Interior  
Property Number: 619120010  
Status: Unutilized  
Comment: 586 sq. ft., one story residence,  
needs major repair, off-site use only  
Bldg. 508—Warehouse  
Black Canyon Dam  
Emmett, Co: Gem, ID 83611-  
Landholding Agency: Interior  
Property Number: 619120011  
Status: Unutilized  
Comment: 4625 sq. ft., needs major rehab.  
most recent use—storage, off-site use only  
Bldg. 510—Carpenter Shop  
Black Canyon Dam  
Emmett, Co: Gem, ID 83611-  
Landholding Agency: Interior  
Property Number: 619120012  
Status: Unutilized  
Comment: 4625 sq. ft., needs major rehab,  
most recent use—storage, off-site use only

**New York**

Bldg. 2  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120009  
Status: Excess  
Base closure  
Comment: 35537 sq. ft., 3 story; bay brick  
frame; pres. of asbestos on pipe insula.;  
most recent use—office, storage, auto shop;  
scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. 3  
Naval Station New York  
207 Flushing Avenue

Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120010  
Status: Excess  
Base closure  
Comment: 2700 sq. ft., 2 story; brick frame;  
most recent use—office, scheduled to be  
vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. 5  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120012  
Status: Excess  
Base closure  
Comment: 3330 sq. ft., 2 story; brick frame;  
most recent use—office, scheduled to be  
vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. 10  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120015  
Status: Excess  
Base closure  
Comment: 3100 sq. ft., 1 story; concrete &  
fiberglass frame; no utilities; most recent  
use—storage; scheduled to be vacated Oct.  
1992.  
GSA Number: 2-N-NY-797  
Bldg. 306  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120016  
Status: Excess  
Base closure  
Comment: 8364 sq. ft., 1 story; brick frame;  
presence of asbestos on pipe insulation;  
most recent use—storage; scheduled to be  
vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. 316  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120019  
Status: Excess  
Base closure  
Comment: 3952 sq. ft., 1 story; brick frame;  
needs heating system repairs; potential  
utils.; presence of asbestos on pipe  
insulation; most recent use—storage; sched.  
to be vacated 10/92.  
GSA Number: 2-N-NY-797  
Bldg. 353  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120020  
Status: Excess  
Base closure  
Comment: 670 sq. ft., 1 story; brick frame;  
limited utilities; needs rehab; most recent  
use—storage; needs heating system repairs  
scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. 670

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120021  
Status: Excess  
Base closure  
Comment: Concrete block gasoline station; no  
sanitary or heating facilities; scheduled to  
be vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. 672  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120023  
Status: Excess  
Base closure  
Comment: 400 sq. ft.; 1 story; wood frame;  
most recent use—pool house scheduled to  
be vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. R1  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120025  
Status: Excess  
Base closure  
Comment: 5274 sq. ft.; 2 story single family  
housing; brick veneer/wood frame;  
presence of asbestos on pipe insulation;  
scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. R2  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120026  
Status: Excess  
Base closure  
Comment: 2400 sq. ft.; 2 story single family  
hsg; cement asbestos/wood frame; needs  
heating system repairs; presence of  
asbestos on pipe insulation; scheduled to  
be vacated 10/92.  
GSA Number: 2-N-NY-797  
Bldg. R3  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120027  
Status: Excess  
Base closure  
Comment: 2400 sq. ft.; 2 story single family  
hsg; cement asbestos/wood frame;  
scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797  
Bldg. R4  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120028  
Status: Excess  
Base closure  
Comment: 2517 sq. ft.; 3 story four-family  
housing; brick asbestos/tile frame;  
scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797

- Bldg. R5**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120029  
Status: Excess  
Base closure  
Comment: 2140 sq. ft.; 1 story single family residence; brick frame; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R6**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120030  
Status: Excess  
Base closure  
Comment: 2140 sq. ft.; 1 story single family residence; brick frame; needs rehab; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R7**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120031  
Status: Excess  
Base closure  
Comment: 2140 sq. ft.; 1 story single family housing; brick frame; needs rehab; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R103**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120032  
Status: Excess  
Base closure  
Comment: 1650 sq. ft.; 2 story; brick frame; needs heating system repairs; limited utils.; most recent use—storage; presence of asbestos on pipe ins.; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R103A**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120033  
Status: Excess  
Base closure  
Comment: 2620 sq. ft.; 1 story; concrete block frame; limited utils.; most recent use—garage; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R104**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120034  
Status: Excess  
Base closure  
Comment: 712 sq. ft.; 2 story; brick frame; most recent use—bachelor officers quarters; scheduled to be vacated Oct. 1992.
- GSA Number: 2-N-NY-797**  
**Bldg. R109**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120035  
Status: Excess  
Base closure  
Comment: 2 story; brick frame; limited utilities; needs heating syst. repairs; most recent use—storage & garage; presence of asbestos on pipe insul.; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R426**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120036  
Status: Excess  
Base closure  
Comment: 2409 sq. ft.; 1 story; brick frame; needs heating system repairs; most recent use—storage; presence of asbestos on pipe ins.; limited utils; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R448**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120037  
Status: Excess  
Base closure  
Comment: 969 sq. ft.; 1 story; concrete & glass frame; limited utilities; needs major rehab; most recent use—greenhouse; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R475**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120039  
Status: Excess  
Base closure  
Comment: 1789 sq. ft.; 1 story; concrete block frame; most recent use—auto hobby shop; presence of asbestos on pipe insulation scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R476**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120040  
Status: Excess  
Base closure  
Comment: 36 sq. ft.; 1 story; metal frame; most recent use—security gate house; needs heating system repairs; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. RG**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120041  
Status: Excess
- Base closure**  
Comment: 15490 sq. ft.; 3 story; brick & stucco frame; needs heating system repairs; needs major rehab; presence of asbestos on pipe ins.; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R8R9**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120042  
Status: Excess  
Base closure  
Comment: 2800 sq. ft.; 2 story; brick frame; most recent use—residential duplex; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. R95**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 779010250  
Status: Excess  
Base closure  
Comment: 41860 sq. ft.; 2 story, stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab. NYS Historical Landmark, sched. to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. RD**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 779010257  
Status: Excess  
Base closure  
Comment: 14120 sq. ft.; 2 story, brick & stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab sched. to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797
- Bldg. 305**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 779010258  
Status: Excess  
Base closure  
Comment: 18920 sq. ft., 2 story, brick frame, limited utils., needs major rehab, presence of asbestos on pipe insulation, needs heating system repairs, scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797

*Land (by State)***New York**

- Land 671**  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120022  
Status: Excess  
Base closure  
Comment: 50 ft. by 25 ft.; most recent use—swimming pool concrete frame; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797

Playing Field—675  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251—  
Landholding Agency: GSA  
Property Number: 549120024  
Status: Excess  
Base closure  
Comment: 87974 sq. ft.; limited utilities; most recent use—baseball field; scheduled to be vacated Oct. 1992.

GSA Number: 2-N-NY-797

Land R464/R474  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251—  
Landholding Agency: GSA  
Property Number: 549120043  
Status: Excess

Base closure  
Comment: 90' x 45' each; concrete over gravel; most recent use—tennis courts; scheduled to be vacated Oct. 1992.

GSA Number: 2-N-NY-797

#### Summary of Suitable/Available Properties

Total number of Properties = 36

#### SUITABLE/UNAVAILABLE PROPERTIES

##### Buildings (by State)

##### Missouri

Bldg. 208-C  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120047  
Status: Excess  
Comment: 2210 sq. ft., most recent use—general storage, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 208-D  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120048  
Status: Excess  
Comment: 750 sq. ft., most recent use—general storage, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 222  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120049  
Status: Excess  
Comment: 16150 sq. ft., most recent use—medical/dental, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 223-A  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120050  
Status: Excess  
Comment: 77340 sq. ft., most recent use—dormitory, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 223-B  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120051  
Status: Excess  
Comment: 21380 sq. ft., most recent use—education bldg., permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 230  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120052  
Status: Excess  
Comment: 1840 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 230-A  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120053  
Status: Excess  
Comment: 1890 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 232-A-H  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120054  
Status: Excess  
Comment: 29280 sq. ft., most recent use—vocational training shop, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 234  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120055  
Status: Excess  
Comment: 44620 sq. ft., most recent use—admin/food service, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 237  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120056  
Status: Excess  
Comment: 300 sq. ft., most recent use—storage, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 244  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120057  
Status: Excess  
Comment: 7480 sq. ft., most recent use—weld/automotive shop, permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F  
Bldg. 223C  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120058  
Status: Excess  
Comment: 123 sq. ft., permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 224B  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120059  
Status: Excess  
Comment: 100 sq. ft., permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 233A  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120060  
Status: Excess  
Comment: 837 sq. ft., permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

Bldg. 233F  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—  
Landholding Agency: GSA  
Property Number: 549120061  
Status: Excess  
Comment: 837 sq. ft., permitted to Dept. of Labor.

GSA Number: 7-D-MO-460-F

##### New York

Bldg. 1  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251—  
Landholding Agency: GSA  
Property Number: 549120008  
Status: Excess  
Base closure  
Comment: 31519 sq. ft.; 7 story brick frame; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.

GSA Number: 2-N-NY-797

Bldg. 4  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251—  
Landholding Agency: GSA  
Property Number: 549120011  
Status: Excess  
Base closure  
Comment: 60400 sq. ft.; 1 story; bay brick frame; most recent use—warehouse & rec. center; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.

GSA Number: 2-N-NY-797

Bldg. 311  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251—  
Landholding Agency: GSA  
Property Number: 549120017

**Status: Excess**

Base closure Comment: 9720 sq. ft.; 2 story; brick frame; needs heating system repairs; needs rehab; presence of asbestos on pipe insulat.; most recent use—ofc/storage; sched. to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797

*Land (by State)***New York****Parking Lot**

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120044  
Status: Excess

Base closure Comment: 425 ft. long by 300 ft. wide; potential utilities; most recent use—paved parking lot; scheduled to be vacated Oct. 1992.  
GSA Number: 2-N-NY-797

**Summary of Suitable/Unavailable Properties**

Total number of Properties = 19

**UNSUITABLE PROPERTIES***Building (by State)***Alaska**

Bldg. No. 10, Firehouse  
Jct. of 5th St. & Ave. B  
Kodiak, Co: Kodiak Island, AK 99619-  
Landholding Agency: DOT  
Property Number: 879120100  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration

**Alabama**

Bldg. 8311 Redstone Arsenal  
Redstone Arsenal, Co: Madison, AL 35898-5340

Landholding Agency: Army  
Property Number: 219120247  
Status: Unutilized  
Reason: Secured Area

Bldg. 8328 Redstone Arsenal  
Redstone Arsenal, Co: Madison, AL 35898-5340

Landholding Agency: Army  
Property Number: 219120248  
Status: Unutilized  
Reason: Secured Area

Bldg. 8500 Redstone Arsenal  
Redstone Arsenal, Co: Madison, AL 35898-5340

Landholding Agency: Army  
Property Number: 219120249  
Status: Unutilized  
Reason: Secured Area

Bldg. 8521 Redstone Arsenal  
Redstone Arsenal, Co: Madison, AL 35898-5340

Landholding Agency: Army  
Property Number: 219120250  
Status: Unutilized  
Reason: Secured Area

Bldg. 8934 Redstone Arsenal  
Redstone Arsenal, Co: Madison, AL 35898-5340

Landholding Agency: Army  
Property Number: 219120251  
Status: Unutilized  
Reason: Secured Area

**Arizona**

Bldg. 311-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120175  
Status: Unutilized  
Reason: Secured Area

Bldg. 313-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120176  
Status: Unutilized  
Reason: Secured Area

Bldg. 316-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120177  
Status: Unutilized  
Reason: Secured Area

Bldg. 318-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120178  
Status: Unutilized  
Reason: Secured Area

Bldg. 319-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120179  
Status: Unutilized  
Reason: Secured Area

Bldg. 321-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120180  
Status: Unutilized  
Reason: Secured Area

Bldg. 350-Navajo Depot Activity  
12 Miles West of Flagstaff on I-40  
Bellemont, Co: Coconino, AZ 86015-5000  
Landholding Agency: Army  
Property Number: 219120181  
Status: Unutilized  
Reason: Secured Area

**California**

Bldg. 13 Riverbank Ammun Plant  
5300 Claus Road  
Riverbank, Co: Stanislaus, CA 95367-  
Landholding Agency: Army  
Property Number: 219120162  
Status: Underutilized  
Reason: Secured Area

Bldg. 171 Riverbank Ammun Plant  
5300 Claus Road  
Riverbank, Co: Stanislaus, CA 95367-  
Landholding Agency: Army  
Property Number: 219120163  
Status: Underutilized  
Reason: Secured Area

Bldg. 178 Riverbank Ammun Plant  
5300 Claus Road  
Riverbank, Co: Stanislaus, CA 95367-  
Landholding Agency: Army  
Property Number: 219120164  
Status: Underutilized  
Reason: Secured Area

Bldg. 81

Los Alamitos Armed Forces Reserve Center  
Los Alamitos, Co: Orange, CA 90720-5001  
Location: Main entrance on Lexington Dr.  
Landholding Agency: Army  
Property Number: 219120278  
Status: Unutilized  
Reason: Other  
Comment: Detached latrine

**Georgia**

Bldg. 5397  
Fort Benning  
Ft. Benning, Co: Muscogee, GA 31905-  
Landholding Agency: Army  
Property Number: 219120268  
Status: Unutilized  
Reason: Other  
Comment: Detached lavatory bldg.

**Iowa**

Bldg. 5A-137-1  
Iowa Army Ammunition Plant  
Middletown, Co: Des Moines, IA 52638-  
Landholding Agency: Army  
Property Number: 219120172  
Status: Unutilized  
Reason: Within 2,000 ft. of flammable or explosive material Secured Area

Bldg. 5A-137-2  
Iowa Army Ammunition Plant  
Middletown, Co: Des Moines, IA 52638-  
Landholding Agency: Army  
Property Number: 219120173  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 5A-137-3  
Iowa Army Ammunition Plant  
Middletown, Co: Des Moines, IA 52638-  
Landholding Agency: Army  
Property Number: 219120174  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

**Indiana**

Bldg. 716-2  
Indiana Army Ammunition Plant  
Charlestown, Co: Clark, IN 47111-  
Landholding Agency: Army  
Property Number: 219120168  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 717  
Indiana Army Ammunition Plant  
Charlestown, Co: Clark, IN 47111-  
Landholding Agency: Army  
Property Number: 219120169  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 725 (portion of)  
Indiana Army Ammunition Plant  
Charlestown, Co: Clark, IN 47111-  
Landholding Agency: Army  
Property Number: 219120170  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 2558  
Indiana Army Ammunition Plant  
Charlestown, Co: Clark, IN 47111-  
Landholding Agency: Army  
Property Number: 219120171

Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

**Kentucky**

6-Room Dwelling  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Location: Off State Hwy 369, which runs off of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120010  
Status: Unutilized  
Reason: Floodway

2-Car Garage  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Location: Off State Hwy 369, which runs off of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120011  
Status: Unutilized  
Reason: Floodway

Office and Warehouse  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Location: Off State Hwy 369, which runs off of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120012  
Status: Unutilized  
Reason: Floodway

2 Pit Toilets  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Landholding Agency: COE  
Property Number: 319120013  
Status: Unutilized  
Reason: Floodway

**Louisiana**

Staff Residences  
SR002, 008, 010, 014, 015, 018, 023  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120284  
Status: Excess  
Reason: Secured Area

Staff Residences  
SR006, and 019,  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120285  
Status: Excess  
Reason: Secured Area

Staff Residences  
Self-Help Storage Bldg. SR027  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120286  
Status: Excess  
Reason: Secured Area

Bldg. D1206, Area D  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120287  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. D1243, Area D

Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120288  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. F1923, Area F  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120289  
Status: Excess  
Reason: Secured Area

Bldg. F1934, Area F  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120290  
Status: Excess  
Reason: Secured Area

Bldg. X5017, Area X  
Louisiana Army Ammunition Plant  
Doyline, Co: Webster, LA 71023-  
Landholding Agency: Army  
Property Number: 219120303  
Status: Excess  
Reason: Secured Area

**Massachusetts**

Material Technology Lab  
405 Arsenal Street  
Watertown, Co: Middlesex, MA 02132-  
Landholding Agency: Army  
Property Number: 219120161  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or explosive material Secured Area

**Maryland**

Bldg. 2528 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel, MD 20755-  
Landholding Agency: Army  
Property Number: 219120152  
Status: Unutilized  
Reason: Secured Area

Bldg. 2529 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel, MD 20755-  
Landholding Agency: Army  
Property Number: 219120153  
Status: Unutilized  
Reason: Secured Area

Bldg. 2538 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel, MD 20755-  
Landholding Agency: Army  
Property Number: 219120154  
Status: Unutilized  
Reason: Secured Area

Bldg. 2539 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel, MD 20755-  
Landholding Agency: Army  
Property Number: 219120155  
Status: Unutilized  
Reason: Secured Area

Bldg. 2548 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel, MD 20755-  
Landholding Agency: Army  
Property Number: 219120156  
Status: Unutilized

Reason: Secured Area  
Bldg. 2558 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel MD 20755-  
Landholding Agency: Army  
Property Number: 219120157  
Status: Unutilized  
Reason: Secured Area

Bldg. 2559 Ft. Geo. G. Meade  
8th & Z Streets  
Fort Meade, Co: Anne Arundel MD 20755-  
Landholding Agency: Army  
Property Number: 219120158  
Status: Unutilized  
Reason: Secured Area

Bldg. 8493 Ft. Geo. G. Meade  
Located inside Motor Park on Gran' Road  
Fort Meade, Co: Anne Arundel MD 20755-  
Landholding Agency: Army  
Property Number: 219120159  
Status: Unutilized  
Reason: Secured Area

**Minnesota**

Bldg. 113  
Twin Cities Army Ammunition Plant  
New Brighton, Co: Ramsey MN 55112-  
Landholding Agency: Army  
Property Number: 219120165  
Status: Unutilized  
Reason: Secured Area

Bldg. 575  
Twin Cities Army Ammunition Plant  
New Brighton, Co: Ramsey MN 55112-  
Landholding Agency: Army  
Property Number: 219120166  
Status: Unutilized  
Reason: Secured Area

Bldg. 598  
Twin Cities Army Ammunition Plant  
New Brighton, Co: Ramsey MN 55112-  
Landholding Agency: Army  
Property Number: 219120167  
Status: Unutilized  
Reason: Secured Area

**Nevada**

62 Concrete Explo. Mag. Stor.  
Hawthorne Army Ammunition Plant  
Hawthorne, Co: Mineral NV 89415-  
Location: North Mag. Area  
Landholding Agency: Army  
Property Number: 219120150  
Status: Unutilized  
Reason: Secured Area

259 Concrete Explo. Mag. Stor.  
Hawthorne Army Ammunition Plant  
Hawthorne, Co: Mineral NV 89415-  
Location: South & Central Mag. Areas  
Landholding Agency: Army  
Property Number: 219120151  
Status: Unutilized  
Reason: Secured Area

**South Carolina**

Bldg. 1560—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120291  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration

Bldg. 1570—Ft. Jackson

Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120292  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 2503—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120293  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 2504—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120294  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 2507—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120295  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 9602—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120296  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 9606—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120297  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 9609—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120298  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 9626—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120299  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 9700—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120300  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 9701—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120301  
Status: Unutilized  
Reason: Other  
Comment: extensive deterioration  
Bldg. 10-414—Ft. Jackson  
Ft. Jackson, Co: Richland SC 29207-  
Landholding Agency: Army  
Property Number: 219120302  
Status: Unutilized

Reason: Other  
Comment: extensive deterioration

#### Tennessee

Bldg. A-0604  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120182  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. A-800  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120183  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. A-1005  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120184  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. A-1101  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120185  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. B-201  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120186  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. B-304  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120187  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. B-410  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120188  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. B-0504  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120189  
Status: Underutilized

Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. B-701  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120190  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. C-0701  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120191  
Status: Underutilized  
Reason: Secured Area  
Bldg. C-901  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120192  
Status: Underutilized  
Reason: Secured Area  
Bldg. C-1004  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120193  
Status: Underutilized  
Reason: Secured Area  
Bldg. C-3104  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120194  
Status: Underutilized  
Reason: Secured Area  
Bldg. D-0101  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120195  
Status: Underutilized  
Reason: Secured Area  
Bldg. D-0204  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120196  
Status: Underutilized  
Reason: Secured Area  
Bldg. D-0304  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120197  
Status: Underutilized  
Reason: Secured Area  
Bldg. D-0404  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll TN 38358-  
Landholding Agency: Army  
Property Number: 219120198



- Reason: Secured Area  
Bldg. G-0901  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120226  
Status: Underutilized  
Reason: Secured Area  
Bldg. G-0805  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120227  
Status: Underutilized  
Reason: Secured Area  
Bldg. G-0902  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120228  
Status: Underutilized  
Reason: Secured Area  
Bldg. G-1101  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120229  
Status: Underutilized  
Reason: Secured Area  
Bldg. G-1205  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120230  
Status: Underutilized  
Reason: Secured Area  
Bldg. G-1302  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120231  
Status: Underutilized  
Reason: Secured Area  
Bldg. H-0403  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120232  
Status: Underutilized  
Reason: Secured Area  
Bldg. H-0503  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120233  
Status: Underutilized  
Reason: Secured Area  
Bldg. H-0801  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120234  
Status: Underutilized  
Reason: Secured Area  
Bldg. H-0806  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120235  
Status: Underutilized  
Reason: Secured Area  
Bldg. H-0904  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120236  
Status: Underutilized  
Reason: Secured Area  
Bldg. H-1003  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Gibson TN 38358-  
Landholding Agency: Army  
Property Number: 219120237  
Status: Underutilized  
Reason: Secured Area  
Bldg. L-0011  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120238  
Status: Underutilized  
Reason: Secured Area  
Bldg. L-0013  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120239  
Status: Underutilized  
Reason: Secured Area  
Bldg. L-0018  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120240  
Status: Underutilized  
Reason: Secured Area  
Bldg. L-0020  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120241  
Status: Underutilized  
Reason: Secured Area  
Bldg. L-0027  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120242  
Status: Underutilized  
Reason: Secured Area  
Bldg. L-0037  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120243  
Status: Underutilized  
Reason: Secured Area  
Bldg. M-0005  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120244  
Status: Underutilized  
Reason: Secured Area  
Bldg. M-0008  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120245  
Status: Underutilized  
Reason: Secured Area  
Bldg. P-0035  
Mod—Igloo Area  
Milan Army Ammunition Plant  
Milan, Co: Carroll, TN 38358-  
Landholding Agency: Army  
Property Number: 219120246  
Status: Underutilized  
Reason: Secured Area
- Utah  
Bldg. 504  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120277  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area  
Bldg. 637A  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120278  
Status: Underutilized  
Reason: Secured Area  
Bldg. 637B  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120279  
Status: Underutilized  
Reason: Secured Area  
Bldg. 637C  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120280  
Status: Underutilized  
Reason: Secured Area  
Bldg. 654  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120281  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area  
Bldg. 700  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120282  
Status: Underutilized  
Reason: Within 2000 ft. of flammable or  
explosive material. Secured Area  
Bldg. 753  
Tooele Army Depot—North Area  
Tooele, Co: Tooele UT 84074-5008  
Landholding Agency: Army  
Property Number: 219120283  
Status: Underutilized

Reason: Within 2000 ft. of flammable or explosive material. Secured Area

#### Virginia

Bldg. T-9512  
U.S. Army Combined Arms Support Command & Fort Lee  
Fort Lee, Co: Prince George VA 23801-  
Location: "A" Avenue  
Landholding Agency: Army  
Property Number: 219120160  
Status: Underutilized  
Reason: Other  
Comment: Extensive deterioration.

#### Land (by State)

#### Kentucky

Barren River Lock & Dam No. 1  
Richardsville, Co: Warren KY 42270-  
Landholding Agency: COE  
Property Number: 319120008  
Status: Underutilized  
Reason: Floodway  
Green River Lock & Dam No. 3  
Rochester, Co: Butler KY 42273-  
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120009  
Status: Underutilized  
Reason: Floodway  
Green River Lock & Dam No. 4  
Woodbury, Co: Butler KY 42288-  
Location: Off State Hwy 403, which is off State Hwy 231  
Landholding Agency: COE  
Property Number: 319120014  
Status: Underutilized  
Reason: Floodway  
Green River Lock & Dam No. 5  
Readville, Co: Butler KY 42275-  
Location: Off State Highway 185  
Landholding Agency: COE  
Property Number: 319120015  
Status: Unutilized  
Reason: Floodway  
Green River Lock & Dam No. 6  
Brownsville, Co: Edmonson KY 42210-  
Location: Off State Highway 259  
Landholding Agency: COE  
Property Number: 319120016  
Status: Underutilized  
Reason: Floodway  
Vacant Land west of locksite  
Greenup Locks and Dam  
5121 New Dam Road  
Rural, Co: Greenup KY 41144-  
Landholding Agency: COE  
Property Number: 319120017  
Status: Unutilized  
Reason: Floodway

#### Pennsylvania

Land—Tioga-Hammond Lakes  
Mansfield, Co: Tioga PA 16933-  
Location: 2 miles northeast of Mansfield on State Route 58044  
Landholding Agency: COE  
Property Number: 319120001  
Status: Excess  
Reason: Floodway

#### Tennessee

Tracts 510, 511, 513 and 514  
J. Percy Priest Dam and Reservoir Project

Lebanon, Co: Wilson TN 37087-  
Location: Vivrett Creek Launching Area,  
Alvin Sperry Road  
Landholding Agency: COE  
Property Number: 319120007  
Status: Underutilized  
Reason: Floodway

#### Summary of Unsuitable Properties

Total number of Properties = 144

#### PROPERTIES TO BE EXCESSED

#### Buildings (by State)

#### Oregon

Bldgs. 1044 and 1525  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-  
Landholding Agency: Agriculture  
Property Number: 159120001  
Status: Unutilized  
Comment: 1575 sq. ft. 1 story wood frame residence with 560 sq. ft. garage, presence of asbestos.

Bldgs. 1045 and 1526  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-  
Landholding Agency: Agriculture  
Property Number: 159120002  
Status: Unutilized  
Comment: 1395 sq. ft. 1 story wood frame residence with 560 sq. ft. garage, presence of asbestos.

Bldg. 2004  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-  
Landholding Agency: Agriculture  
Property Number: 159120003  
Status: Unutilized  
Comment: 1344 sq. ft. 1 story wood frame, most recent use—bunkhouse.

Bldg. 2206  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-  
Landholding Agency: Agriculture  
Property Number: 159120004  
Status: Unutilized  
Comment: 1820 sq. ft. 1 story wood frame, most recent use—warehouse.

Bldg. 2305  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-  
Landholding Agency: Agriculture  
Property Number: 159120005  
Status: Unutilized  
Comment: 1820 sq. ft. 1 story wood frame, most recent use—machine storage.

Bldg. 2507  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-  
Landholding Agency: Agriculture  
Property Number: 159120006  
Status: Unutilized  
Comment: 288 sq. ft. 1 story wood frame, most recent use—gas house.

Storage Bldg.  
Union Compound Administrative Site  
Highway 203  
Union, Co: Union OR 97883-

Landholding Agency: Agriculture  
Property Number: 159120007  
Status: Unutilized  
Comment: 488 sq. ft. 1 story wood frame.

#### Summary of Properties to be Excessed

Total number of Properties = 7  
[FR Doc. 91-15242 Filed 6-27-91; 8:45 am]  
BILLING CODE 4210-29-M

#### DEPARTMENT OF THE INTERIOR

#### Office of the Secretary

#### Central Arizona Project (CAP) Water Allocations and Water Service Contracting with Indian Tribes

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of proposed modifications to CAP water allocation decision.

**SUMMARY:** The purpose of this action is to provide advance notice of the Department's intent to modify the existing CAP water allocation decisions to facilitate deletion of the following contractual provisions from existing CAP water service contracts with Indian tribes and from the proposed CAP water service contract with the Gila River Indian Community (GRIC): (1) The requirement in the 1983 allocation decision for a "mandatory substitute" water (non-potable effluent water) provision and (2) the requirement in the 1980 allocation decision for crediting the CAP water allocation against the tribes' Winters rights. A document summarizing the Department's environmental review is available on request.

**DATES:** All comments and material relevant to these proposed modifications that are received within 30 calendar days following the publication of this notice will be considered. Additionally, depending on the level of interest in the proposed changes, the Department may conduct public meetings or hearings on the proposed modifications. In that event, the dates and places of the meetings or hearings would be published in newspapers of general circulation in Arizona and in the *Federal Register*.

**FOR FURTHER INFORMATION:** Interested parties should contact Mr. Timothy W. Glidden, Chairman, Water Policy Working Group, U.S. Department of the Interior, Office of the Secretary, 1849 C Street, NW., Washington, DC 20240, Mail Stop 6217. Telephone: 202-208-7351.

**SUPPLEMENTARY INFORMATION:** Previous Departmental notices concerning CAP

water allocations were published in the **Federal Register (FR)** volumes 37 FR 28082, December 20, 1972; 40 FR 17298, April 18, 1975; 41 FR 45883, October 18, 1976; 45 FR 52938, August 8, 1980; 45 FR 81265, December 10, 1980; and 48 FR 12446, March 24, 1983. These decisions were made pursuant to the authority vested in the Secretary by the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1505), the Implementing Procedures of the U.S. Department of the Interior (516 Departmental Manual (DM) 5.4), and in recognition of the Secretary's trust responsibility to Indian tribes.

On October 18, 1976 (41 FR 45886), Acting Secretary Frizzel published the Department's allocation of CAP water made on October 12, 1976, to Indian tribes in central Arizona (1976 Decision). Under the 1976 Decision, 257,000 acre-feet of CAP water per year was allocated to the tribes for use prior to year 2005. Under that decision, the amount of water allocated to Indians after year 2005 would be decreased to either 10 percent of the CAP supply or to 20 percent of the agricultural supply, whichever was to their advantage.

During the Carter Administration, Secretary Andrus concluded that the 1976 Decision was unfair to the Indian tribes because the abrupt reduction in the Indian water supply after year 2005 would mean that the economic growth permitted on the reservations in the early years of CAP operations would be temporary, and both the Government and the tribes would be faced with the costs of a return to depressed economic conditions. Also, Secretary Andrus believed that the Indian allocation should be increased because (1) some tribes which should have received an allocation of CAP water were not included in the 1976 Decision and (2) CAP water should be allocated to tribes for support of permanent tribal homelands.

On December 10, 1980 (45 FR 81265), Secretary Andrus published allocations made on December 5, 1980, of 309,828 acre-feet of CAP water per year to 10 Indian tribes in central Arizona (1980 Decision). The 1980 Decision stated in part:

In an effort to make the M&I supply as dependable as possible, these allocations permit the substitution of non-CAP water for Indian CAP water, and provisions addressing

such substitutions will be included in the Indian water service contracts.

Substitute water included treated municipal effluent or ground water. Secretary Andrus recognized that by improving the Indian supply in later years of CAP operations, the position of the non-Indian municipal and industrial (M&I) users would be less favorable than under the 1976 Decision. Responding to suggestions by Governor Babbitt of Arizona, Secretary Andrus incorporated the mandatory substitute water provision into the CAP water allocation decision as a means of ameliorating the concern of the non-Indian M&I entities that the increased allocation to the Indian tribes had occurred at the non-Indian M&I entities' expense. Substitute water exchanges were viewed as a means of firming the non-Indian M&I water supply in CAP water shortage years.

On December 11, 1980, the Department executed CAP water service contracts with 9 of the 10 Tribes which had received allocations of CAP water. The mandatory substitute water provision was included in the contracts offered to four tribes because they were in close proximity to municipal areas and were considered capable of taking delivery of municipal effluent in lieu of CAP water. CAP water service contracts containing the mandatory substitute water provision were executed with three of the tribes. Those tribes included the Salt River Pima-Maricopa Indian Community, the Ak-Chin Indian Community, and the Papago Tribe, now known as the Tohono O'odham Nation. The mandatory substitute water provision was also included in a contract offered to GRIC. However, GRIC elected to not sign the CAP water service contract because of its strong objections to the mandatory substitute water provision.

After the year 2005, the substitute water provision provided for the exchange of up to one-half of the tribes' CAP water allocation. The substitution was to be accomplished under criteria intended to assure that the quality, quantity, suitability, and delivery facilities of the substitute water would be appropriate for the beneficial uses to which the water was to be put. All costs of the substitution were to be borne by the Central Arizona Water Conservation District (CAWCD) or the benefitting non-Indian subcontractor, and any favorable cost differential was to inure to the benefit of the tribes or the Federal Government. The substitute water provision reserved unto the Secretary the right to approve a substitution if he or she determined that the tribe's

agreement to the substitution was being unreasonably withheld.

The 1980 Decision also provided that the allocation of CAP water would be credited against a tribe's Winters rights, as and when finally adjudicated or finally determined by Federal legislative action. The 1980 Decision also required that this stipulation be included in the Indian CAP water service contracts. The stipulation was included in all of the executed Indian contracts.

Secretary Andrus did not allocate CAP water to non-Indian entities in the 1980 Decision. However, that decision facilitated the submission of recommendations by the Arizona Department of Water Resources (ADWR) to the Secretary for allocations of CAP water to non-Indian entities. On March 24, 1983 (48 FR 12446), Secretary Watt issued a CAP water allocation decision (1983 Decision) that allocated CAP Water to the non-Indian entities and reaffirmed Secretary Andrus's allocation to the Indian tribes with one significant modification. The 1983 Decision provided that GRIC would have to accept a 25 percent reduction in its CAP water allocation during shortage years in lieu of the 10 percent reduction that was required in the 1980 Decision. The 1983 Decision reaffirmed (1) the mandatory substitute water provisions in the existing contracts with Indian entities and (2) the allocation of water to Indian entities for tribal homeland purposes. The requirement for crediting the CAP allocation toward a tribe's Winters rights was not changed by the 1983 Decision.

#### Proposed Deletion of the Mandatory Substitute Water Provision

The Department has been attempting to negotiate a CAP water service contract with GRIC since 1980. Over the last 10 years, circumstances have changed in central Arizona and the Department now believes that the requirement for a mandatory substitute water provision in the CAP water service contracts with Indian tribes is no longer critical to management of water supplies in central Arizona. The Department now proposes to amend the 1980 and 1983 Decisions to delete the requirement for mandatory substitute water exchanges, to allow those tribes with the provision in their contracts opportunity to amend their contracts to delete the provision, and to delete the provision from the proposed contract with GRIC.

The Department's reasons for proposing to delete the mandatory substitute water provision include the following:

(1) The Department is now aware of any substitute water that has been or is being proposed for exchange with Indian tribes.

(2) Under the 1983 Decision and the existing CAP M&I water service subcontracts, there is no apparent incentive for a municipality to exchange substitute water with an Indian tribe. The 1983 Decision was based on a "pooling" concept whereby all non-Indian M&I entities would benefit on a pro rata basis from CAP water made available because of substitute water exchanges. Under the pooling concept, a municipality would make its effluent water available to CAWCD. CAWCD, through its water users, would finance the capital cost of facilities to transport the substitute water to a point of use on the reservation, and pay for the cost of operation, maintenance and replacements (OM&R) associated with delivery of the substitute water. If a municipality exchanges its effluent on its own with an Indian tribe, the M&I water service subcontracts provide that the municipality must incur all of the capital and OM&R costs to convey the effluent to a point of use on the reservation and the municipality's entitlement to CAP water under the subcontract must be reduced by the amount of CAP water received under the exchange. The municipalities opposed the pooling concept during the decision process leading up to the 1983 Decision, and it is the Department's understanding that they do not consider the potential benefits adequate to justify entering into future effluent exchange arrangements under the pooling concept.

(3) Because there is little or no incentive for municipalities to exchange effluent directly with Indian tribes, the municipalities are using or making plans to use effluent within their own service areas. The municipalities now view effluent as a valuable resource to be used in their service areas.

(4) Since the 1983 Decision, Arizona law has been enacted which requires that effluent be used on golf courses and in artificial lakes in lieu of potable water. The effect of this law is to create a new demand for effluent within the municipalities' service areas.

(5) Since the 1983 Decision, the municipalities have taken steps to augment their water supplies by other means. Several of the municipalities have purchased water ranches to obtain ground water or surface supplies. Further, the municipalities are considering introducing such non-Project water into the CAP aqueduct for conveyance to their service areas. They are also considering augmenting their water supplies by recharging CAP water

into the ground in the early years of CAP operations for subsequent recovery and use during future shortage years or for future demands.

(6) Deletion of the mandatory substitute water provision would not preclude the execution of voluntary substitute water agreements between the tribes and municipalities. If there are water shortages in the future, the Department believes that there will be strong pressures for all water users in Arizona, including the tribes, to work together to make the most effective use of all water resources, including effluent.

(7) As a practical matter, the cooperation of the tribes would be necessary to implement any substitute water exchange. The imposition of a substitute water exchange on a tribe without its consent would be inconsistent with the Secretary's trust responsibility to the tribe.

#### **Proposed Deletion of the Requirement for Crediting CAP Water Against a Tribe's Winters Rights**

At the time of execution of the existing CAP water service contracts, concern was expressed that the Indian tribes might end up with a windfall; that is, the tribes could get all or most of their claimed water rights decreed to them in litigation, and in addition they could get CAP entitlements. To prevent this possible windfall, the following provision was included in the Indian water service contracts:

As such time as Contractor's Water Rights are finally determined, the Project Water delivered to the Contractor under this contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and Contractor at that time. Thereafter, Contractor may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this contract. Until such time as Contractor's Water Rights are finally determined, the Project Water delivered to Contractor is supplemental water and is not credited against, or in any way related to, Contractor's Water Rights.

Experience has shown this article to be unnecessary and confusing. Accordingly, based on the following reasons, the Department intends to eliminate this article from the proposed contract with GRIC and to offer to remove it from the other Indian contracts via amendments. First, the underlying justification for the provision has not happened. No tribe has received an adjudicated entitlement to water which would make the CAP water appear to be a windfall. In fact, of the CAP tribes within the area of the Gila River adjudication, many have reached settlements of their water right claims

(the Ak-Chin Indian Community, the Tohono O'odham Nation, the Salt River Pima-Maricopa Indian Community, and the Fort McDowell Indian Community), and others are moving in the direction of settlement (GRIC, the San Carlos Apache Tribe, the Yavapai Prescott Tribe, and the Camp Verde Tribe). Moreover, in the context of settlements, the CAP entitlements are important building blocks in regard to arriving at water budget goals, as opposed to posing threats as windfalls. In other words, the fear which resulted in the development of the contract provision has not materialized and therefore the need for the provision has been eliminated.

Secondly, the contract provision is confusing and subject to a variety of interpretations. As a result, the Indian tribes are not clear as to the meaning of the provision, and other water users cannot know with certainty what the Secretary and Contractor have agreed upon. Given this confusion, the contract provision does not serve a useful purpose in the administration of CAP.

#### **Compliance with the National Environmental Policy Act of 1969 (NEPA)**

The Department prepared an Environmental Impact Statement (EIS) on Water Service Allocations and Water Service Contracting for the Central Arizona Project. The Final EIS for which a notice of availability was published on March 24, 1982 (47 FR 12689), examined a number of allocation alternatives, two of which required effluent exchanges for tribal entities. The Department's Record of Decision published on March 24, 1983 (48 FR 12446), discussed these alternatives and options for effluent exchanges.

With respect to the current proposal, the Department has reviewed earlier NEPA documents and evaluated the impacts of removing the mandatory substitute water provision on effluent exchanges from the contracts. As a result of the NEPA review and environmental evaluation, it was determined that the relative differences in environmental impacts among the allocation alternatives, with and without the effluent exchange options would not have a significant effect on the human environment; and that there were no significant new circumstances or information relative to environmental concerns bearing on the proposed action that require supplemental NEPA compliance.

A document summarizing the Department's environmental review and analysis is available upon request (see

"FOR FURTHER INFORMATION" for source). Accordingly, the Department does not anticipate any further environmental compliance activities; however, should new and significant information relevant to environmental concerns arise during the review and comment period on this proposal, then a supplemental NEPA review will be carried out, as appropriate, prior to the Secretary's final decision on the proposed action.

Deletion of the contractual provision regarding Winters rights is an administrative change which is not anticipated to cause any significant environmental impacts; however, appropriate NEPA clearance will be completed for Indian contractors desiring to delete this provision from their contracts. Comments on any potential environmental impacts associated with these actions may also be made during the review and comment period on this proposal.

#### Effect on Previous Decisions:

In effect this Federal Register notice proposes to amend the decisions published by Secretary Andrus on December 10, 1980, and by Secretary Watt on March 24, 1983. Following the review and comment period, and following consideration of the comments received, a final decision in line with the proposals contained herein will be published in the Federal Register that officially modifies the CAP water allocation policies.

Dated: June 24, 1991.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 91-15370 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-09-M

#### White House Conference on Indian Education Advisory Committee

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

**DATE, TIME AND PLACE:** July 18, 1991, at 9 A.M. to 5 P.M. and July 19, 1991, at 9 A.M. to 5 P.M. at the Sheraton Denver

Airport Hotel, 3535 Quebec Street, Denver, Colorado, 80207.

**FOR FURTHER INFORMATION CONTACT:** Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C St., NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

*Agenda:* The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on all aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

*Items to be discussed:* Pre-Conference activities; selection process for participants; budget and administrative matters; election of Conference Chairperson; Indian Nations-At-Risk status, Subcommittee activities, report on activities for preconference reporting in October 1991, Conference topics and writers and other matters related to the Conference.

Dated: June 21, 1991.

Selma Sierra,

Assistant to the Secretary and Director of External Affairs.

[FR Doc. 91-15437 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-RK-M

#### Bureau of Land Management

[Ca-060-01-4410-08]

#### Availability of Draft South Coast Resource Management Plan and Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** A draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the South Coast Planning Area. The RMP/EIS describes and analyzes alternatives for future management of approximately 296,000 acres of public land located in portions of the California Counties of San Diego, Riverside, Los Angeles, San Bernardino and Orange; these public lands include 167,000 acres of split-estate lands where there are federally-owned minerals but the land surface is privately owned. Copies of the draft RMP/EIS may be obtained from the Palm Springs-South Coast Resource Area, 400 South Farrell Drive, suite B-205, Palm Springs, CA 92262; phone (619) 323-4421. Copies will be available for review at public libraries within the five county planning area and at the following additional BLM locations:

Office of Public Affairs, Main Interior Bldg., rm. 5600, 18th and C Streets NW., Washington, DC 20240  
California State Office, 2800 Cottage Way, Sacramento, CA 95825  
California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92507.

**DATES:** Written comments on the draft RMP/EIS must be submitted or postmarked no later than October 4, 1991. Comments may also be presented at public meetings to be held:

6:30 p.m. Monday July 29, Ramona Community Center, 434 Aqua Lane, Ramona, CA.

6:30 p.m. Tuesday July 30, Barrett Cafe, 1020 Barrett Road at Barrett Junction, San Diego County, CA.

6:30 p.m. Wednesday July 31, Hemet City Council Chambers, 450 E. Latham Ave., Hemet, CA.

6:30 p.m. Thursday September 12, Sierra Vista Junior High School, 19425 West Stillmore Street, Canyon Country, CA

6:30 p.m. Wednesday September 18, Walnut School, 625 N. Walnut, La Habra, CA.

**ADDRESSES:** Written comments should be addressed to Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, Bureau of Land Management, 400 South Farrell Drive, suite B-205, Palm Springs, CA.

#### FOR FURTHER INFORMATION CONTACT:

Duane Winters, RMP Team Leader, Palm Springs-South Coast Resource Area; phone (619) 323-4421.

**SUPPLEMENTARY INFORMATION:** The draft RMP/EIS describes and analyzes five alternatives to resolve the following issues: (1) Land ownership and use authorization, (2) threatened, endangered and other sensitive species, (3) Open Space, (4) recreation and public access, and (5) oil and gas leasing and sand and gravel development. The alternatives being considered can be summarized as: (1) No action or continuation of present management, (2) administrative adjustments, (3) sensitive species, open space and recreation, and (4) use opportunities. The preferred alternative is (3) sensitive species, open space and recreation except for the Los-Angeles-Orange County Management Area where it is (1) continuation of present management.

The RMP/EIS proposes seven Areas of Critical Environmental Concern (ACEC's). The preferred alternative would designate:

The Cedar Canyon ACEC (705 acres) for preservation of populations of Mexican flannelbush. Cedar Canyon is near Otay Mountain in San Diego County. The ACEC would be a right-of-

way avoidance area, not available for mineral material sales or livestock grazing and closed to motorized vehicle use. Acquisition of 280 acres for addition to the ACEC would be pursued.

Lands surrounding Tecate Peak (355 acres) and Little Tecate Peak (269 acres) as the Kuchamaa ACEC for the protection of Native American religious heritage. The ACEC would be a right-of-way avoidance area, not available for mineral material sales or livestock grazing. Motorized vehicle use within the ACEC would be limited. The feasibility of relocating or removing the existing communication site facilities on Tecate Peak would be explored. Acquisition of approximately 500 acres for addition to the ACEC would be pursued.

Steele Peak (1,540 acres) for preservation of Stephens' kangaroo rat habitat. The ACEC would be a right-of-way avoidance area and unavailable for mineral material sales. The area outside the existing allotment boundary would be unavailable for livestock grazing pending completion of an activity plan. Withdrawal of the ACEC from mineral leasing and entry under the 1872 mining law would be pursued. Acquisition of approximately 9,600 acres for addition to the ACEC would be pursued.

The Santa Ana River Wash ACEC, totalling of 760 acres, for protection of Santa Ana River woolly-star and slender-horned spineflower. The ACEC would be a right-of-way avoidance area, unavailable for mineral material sales, closed to motorized vehicle use and unavailable for livestock grazing.

Public land (1,260) acres within the Santa Margarita Ecological Reserve as the Santa Margarita Reserve ACEC for protection for sensitive species and natural values. The ACEC would be a right-of-way avoidance area, unavailable for mineral material sales and livestock grazing. Withdrawal of the ACEC from mineral leasing and entry under the 1872 mining law would be pursued. A portion of the ACEC, 360

acres, would be closed to motorized vehicle use. Acquisition of 300 acres for addition to the ACEC would be pursued.

The Million Dollar Spring ACEC, approximately 5,830 acres of public lands within the eastern part of the Beauty Mountain Wilderness Study Area, for the protection of watershed and sensitive natural values. The ACEC would be a right-of-way avoidance area and not available for material sales. Acquisition of 510 acres for addition to the ACEC would be pursued.

The Johnson Canyon ACEC, involving 1,150 acres currently leased to the San Diego State University Systems Ecology Group, for the protection of unique vegetation resources. The ACEC would not be available for mineral material sales or livestock grazing and would be a right-of-way avoidance area. Acquisition of 510 acres for addition to the ACEC would be pursued.

The draft RMP contains a determination of eligibility for three segments of the Santa Margarita River as a potential unit of the National Wild and Scenic River System. The 1.5 miles under BLM management meet the classification of "wild river". Interim protective measures are identified in the draft RMP.

Dated: June 19, 1991.

Gerald E. Hiller,  
District Manager.

[FR Doc. 91-15318 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-40-M

**Issuance of Land Exchange Conveyance Document; Colorado 51886; Exchange of Public and Private Lands in Routt and Moffat Counties, Colorado**

The United States issued an exchange conveyance document to John Wittemyer on May 28, 1991 for the following described lands under section 206 of the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1716]:

**Sixth Principal Meridian, Colorado,**

T. 3 N., R. 85 W.,

Sec. 13, lot 1,  
comprising 42.41 acres as public lands.

In the exchange for these lands, the United States acquired the following described lands from John Wittemyer:

**Sixth Principal Meridian, Colorado,**

T. 6 N., R. 90 W.,

Metes and bounds parcel within lot 2 of section 6, at Center Street and Victory Way in the town of Craig, Colorado, comprising 1.376 acres of public lands

The purpose of this exchange was to acquire the nonfederal lands for an administrative site. The public interest was served through this exchange. The values of the Federal public lands and the nonfederal land in the exchange were appraised at \$22,500 and \$23,000, respectively.

Dated: June 21, 1991.

Robert S. Schmidt,  
Chief, Branch of Realty Programs.

[FR Doc. 91-15372 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-JB-M

[UT-020-01-4212-13; U-65684 and U-65699]

**Salt Lake District; Realty Action**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, Exchange of Public Lands in Tooele and Utah Counties.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The land will be exchanged after a 60 day waiting period from the publication of this notice.

Township	Range	Meridian	Section	Subdivision	Acres			
1S.	11W.	Salt Lake	28	S 1/2 SW 1/4 NW 1/4 NW 1/4	5.000			
				N 1/2 NW 1/4 SW 1/4 NW 1/4	5.000			
			29	S 1/2 S 1/2 NE 1/4 NE 1/4	10.000			
				SE 1/4 NE 1/4	40.000			
2S.	6W.	Salt Lake	14	E 1/2 SE 1/4	80.000			
				NE 1/4 SW 1/4	40.000			
			9S.	3E.	Salt Lake	5	E 1/2 SE 1/4	80.000
						8	Lots (1 through 12)	469.820
9S.	1E.	Salt Lake	22	Tract C	6.536			
			9S.	1E.	Salt Lake	27	E 1/2 SE 1/4 SW 1/4 SW 1/4	7.500
						W 1/2 E 1/2 SE 1/4 SW 1/4 SW 1/4		
Total Acres					743.856.			

In exchange for these lands, the United States will acquire the following described lands:

Township	Range	Meridian	Section	Subdivision	County tract No.	Acres			
2S.	4W.	Salt Lake	11	NE ¼ NE ¼	5-29-28	33.860			
				SE ¼ NE ¼	5-29-27	33.380			
				SW ¼ NE ¼	5-29-24	17.000			
				N ½ NE ¼ SE ¼	5-29-26	25.000			
				SE ¼ SE ¼	5-29-21	20.775			
				SE ¼ SE ¼	5-29-25	15.000			
				SW ¼ SE ¼	5-29-22	40.000			
				NW ¼ SE ¼	5-29-30	27.000			
			E ½ SW ¼	5-29-29	76.330				
			12	Lots 1,2,3,4	5-30-4	288.345			
				NW ¼	5-30-3	158.720			
				W ½ SW ¼	5-30-5	160.000			
			14	E ½ NW ¼	5-32-5	80.000			
				SW ¼ NW ¼	5-32-6	39.000			
			Total Acres						119.000
									806.065

The purpose of this exchange is to acquire the non-Federal lands which have high public value for wildlife and access to an isolated block of public land. The exchange will give the public and the Bureau of Land Management access to the northwest side of the Oquirrh Mountains where the private landowners have blocked the access to thousands of acres of public land.

There is a large elk herd on the Oquirrh Mountains and the Department of Wildlife Resources can't get onto the northwest part of the mountain to manage the herd. The public interest will be served by completing the exchange.

The values of the lands are believed to be approximately equal. Full equalization of value will be achieved after a formal appraisal has been completed.

Lands to be transferred from the United States will be subject to the following reservation: A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945 (1982).

Publication of this notice segregates the above described public land from appropriation under all other public land laws, including the general mining laws, for a period of 2 years from the date of first publication.

Further information concerning the exchange, including the EA, is available for review at the Salt Lake District Office.

For a period of 45 days from the date of first publication, interested parties may submit comments to the Salt Lake

District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

*Salt Lake District Manager.*

[FR Doc. 91-15406 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

## DEPARTMENT OF THE INTERIOR

[WY-060-4212-14; WYW81452]

### Realty Action; Direct Sale of Public Lands; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, direct sale of public lands in Natrona County, Wyoming.

**SUMMARY:** The Bureau of Land Management has determined the lands described below are suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1917:

Sixth Principal Meridian

T. 40 N., R. 87 W.,

Section 13: SE ¼ SE ¼ SW ¼ NE ¼.

The above lands aggregate 2.5 acres in Natrona County, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Bill Mortimer, Area Manager, Platte River Resource Area, P.O. Box 2420, 815 Connie Street, Mills, Wyoming 82644, (307) 261-7500.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management proposes to sell the surface and mineral estate, other than oil and gas, to Wayne A. and Carolyn M. Steinberg, pursuant to sections 203 and 209 of FLPMA, 43 U.S.C. 1713 and 1719. The Steinbergs wish to acquire the property to secure

their equity in two A-frame cabins and other improvements. The Steinbergs have occupied this land for over 21 years under appropriate leases, and have developed and improved the lands in accordance with all the terms and conditions of the leases.

The proposed direct sale is scheduled for August 29, 1991. The land parcel is to be offered at fair market value. In addition to this sale amount, the Steinbergs will be required to submit a nonrefundable application fee of \$50.00 in accordance with 43 CFR subpart 2720 for conveyance of all unreserved mineral interests in the lands.

Because of the existing improvements, the land is difficult and uneconomic to manage as part of the public land system, and is not suitable for management by another federal agency. The land is specifically identified in the Platte River Resource Area Resource Management Plan for sale to the Steinbergs, and Natrona County officials have been notified of the proposal. Detailed information concerning the proposed sale, including planning documents, land and mineral reports, and the environmental assessment, is available at the Bureau of Land Management, Platte River Resource Area Office, 815 Connie Street, P.O. Box 2420, Mills, Wyoming 82644.

Conveyance of the above lands will be subject to:

1. Reservation of the right-of-way for ditches or canals pursuant to the Act of August 30, 1990, 43 U.S.C. 945.
2. Reservation of oil and gas to the United States with the right to prospect for, mine, and remove the same.
3. Reservation of an easement 100 feet wide along the southern boundary of the parcel.

4. A wetlands covenant to protect and preserve the wetland area in and along the Middle Fork of Buffalo Creek.

5. Oil and gas lease WYW80205.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the *Federal Register*. The segregative effect will end upon issuance of the patent or 270 days from the date of this sale, whichever comes first.

For a period of 45 days from the date of issuance of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Casper District, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify the realty action. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Dated: June 21, 1991.

James W. Monroe,  
District Manager.

[FR Doc. 91-15373 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-22-M

[G-040-G1-0404-4410-14; KS RMP]

#### Tulsa District Office; Availability of the Proposed Kansas Resource Management Plan and Final Environment Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM), Tulsa District, announces the availability of the Proposed Kansas Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS). This document identifies and analyzes land use planning options for BLM managed Federal lands and minerals throughout the state of Kansas. The Draft Kansas RMP/Draft EIS was made available for public review and comment on October 1, 1990. Comments received on the Draft were considered in preparing the Proposed RMP/FEIS. Any person who participated in the planning process and has an interest that is or may be affected by approval of the Proposed RMP may file a protest.

**DATES:** Protests must be received no later than July 31, 1991.

**ADDRESSES:** Comments should be sent to: Director, Bureau of Land Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

**FOR FURTHER INFORMATION OR COPIES OF THE PROPOSED RMP/FEIS, CONTACT:** Brian Mills, RMP Team Leader, Oklahoma Resource Area, 221 North Service Road, Moore OK 73160-4946, Telephone: (405) 794-9624.

**SUPPLEMENTARY INFORMATION:** The Proposed RMP/EIS identifies and analyzes the future options for managing the Federal mineral estate situated within Kansas administered by the BLM. The planning area for the Kansas RMP includes all BLM managed Federal minerals under private or State surface and minerals under other Federal surface and mineral estate within Kansas. The Federal mineral estate encompasses over 744,000 acres of both split estate minerals (Federal minerals under private or State surface) and minerals under other Federal surface management agencies lands. (Not included are Federal minerals under the U.S. Forest Service managed Cimarron National Grassland). The issue addressed by this RMP/EIS effort is the leasing and development of the Federal oil and gas mineral resource. The Proposed RMP was prepared using the BLM planning regulations issued under the authority of the Federal Land Policy and Management Act of 1976. The RMP provides a comprehensive framework for managing and allocating Federal minerals within Kansas over the next 15 years. Three RMP alternatives were developed to describe the different management options available to BLM in response to the issue of administering Federal oil and gas in Kansas. Each alternative presented a different level of oil and gas leasing stipulation application. Together with the Continuing Management Guidance each of the alternatives formed a separate, feasible land-use plan. The "Continuing Management Guidance" section of the Proposed RMP describes those aspects of current management which are not at issue and will continue after the RMP is approved. The Continuing Management Guidance was developed primarily from laws, regulations, and manuals, as well as from previous land use plans.

The Proposed Plan is the Preferred Alternative (Alternative B), Intensive Surface Protection presented in the RMP/FEIS. This alternative places primary emphasis on protecting important environmental values through the use of additional oil and gas leasing stipulations. The goal of this alternative is to change present management direction so that identified surface resource values are protected in a manner that gives priority to the surface resource.

Dated: June 24, 1991.

Jim Sims,

District Manager.

[FR Doc. 91-15405 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-FB-M

[NV-030-01-4214-10; CACA 24052]

#### Proposed Withdrawal and Opportunity for Public Meeting; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposed to withdraw 2,104.42 acres of public land in Alpine County, California, to protect the Indian Creek Recreation Area. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**EFFECTIVE DATE:** June 28, 1991.

Comments and requests for a public meeting must be reviewed by July 29, 1991.

**ADDRESSES:** Comments and meeting requests should be sent to the Carson City District Manager, BLM, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706.

**FOR FURTHER INFORMATION CONTACT:** Steep Weiss or John Matthiessen, BLM Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada 89706, Telephone (702) 885-6000.

**SUPPLEMENTARY INFORMATION:** On April 15, 1991, the assistant Secretary of the Interior for Lands and Minerals Management approved an application which the Bureau of Land Management filed to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian, California

T. 10 N., R. 20 E.

Sec. 3, W $\frac{1}{2}$  lot 5, W $\frac{1}{2}$  lot 6, lot 7, E $\frac{1}{2}$  lot 8, E $\frac{1}{2}$ W $\frac{1}{2}$  lot 8, W $\frac{1}{2}$  lot 9, W $\frac{1}{2}$ E $\frac{1}{2}$  lot 9, lots 10, and 11, E $\frac{1}{2}$  lot 12, E $\frac{1}{2}$ W $\frac{1}{2}$  lot 12, W $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 4, S $\frac{1}{2}$ W $\frac{1}{2}$  lot 5, S $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$  lot 6, S $\frac{1}{2}$ E $\frac{1}{2}$  lot 6, W $\frac{1}{2}$  lot 6, lots 7 and 8, E $\frac{1}{2}$  lot 9, E $\frac{1}{2}$  lot 10, E $\frac{1}{2}$  lot 11, lots 17 and 18, SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 9, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 10, W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ .

The area described aggregates 2,104.42 acres of public lands in Alpine County California.

The purpose of the withdrawal is to protect the Indian Creek Recreation Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the *Federal Register*, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved before the end of two years. Temporary uses which may be permitted during this segregative period include licenses, permits, cooperative agreements, and discretionary land-use authorizations of a temporary nature.

Dated: June 18, 1991.

James W. Elliott,

*District Manager, Carson City District.*

[FR Doc. 91-15423 Filed 6-27-91; 8:45 am]

BILLING CCDE 4310-HC-M

[UT-942-4214-10; U-60665]

### Proposed Withdrawal and Opportunity for Public Meeting; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 1,570 acres of public land in Millard County to protect a crucial raptor nesting habitat for the peregrine falcon, golden eagle, and the prairie falcon. This notice closes the land for up to 2 years

from surface entry and mining. The land will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by September 26, 1991.

**ADDRESSES:** Comments and meeting requests should be sent to the Utah State Director, BLM, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnes, BLM, Utah State Office (801) 539-4119.

**SUPPLEMENTARY INFORMATION:** On June 12, 1991, an application was approved allowing the Bureau of Land Management to withdraw the following described public land temporarily from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

#### Salt Lake Meridian

T. 19 S., R. 6 W.,

Sec. 28, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 29, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;

Sec. 30, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 31, E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 32, All; \*

Sec. 33, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ .

\*Indicates Utah State lands.

The area described contains 1,570.00 acres in Millard County, Utah.

The purpose of the withdrawal is to protect the crucial raptor nesting habitat for the peregrine falcon, golden eagle, and the prairie falcon. The withdrawal would also protect the unique geological features of Pavant Butte for scientific and geologic studies.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the *Federal Register*, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

James M. Parker,

*State Director.*

[FR Doc. 91-15407 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

### National Park Service

#### Kennesaw Mountain National Battlefield Park, Georgia; Acceptance of Concurrent Jurisdiction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of correction.

**SUMMARY:** This notice corrects the Supplementary Information section in a notice previously published in the *Federal Register* on June 6, 1991, (56 FR 26143) regarding the conveyance by the Governor of Georgia of concurrent jurisdiction over lands and roadways situated within the administrative boundaries of Kennesaw Mountain National Battlefield Park in the State of Georgia. The Notice of June 6, 1991 is correct except for the Supplementary Information which should have read as follows:

**SUPPLEMENTARY INFORMATION:** On December 14, 1982, the United States, acting under the authority of 16 U.S.C. 1a-3 and 40 U.S.C. 255, and the State of Georgia, acting in accordance with the provisions of sections 15-302.1 and 15-306 of the Georgia Code, entered into an agreement whereby concurrent jurisdiction was established over lands and waters within certain specified units of the National Park System within the State of Georgia. This agreement also extended concurrent jurisdiction to all lands owned by the United States within the exterior boundaries of the Kennesaw Mountain National Battlefield Park, but excluded three tracts of land owned by Cobb County and the State of Georgia.

It was recently determined that the National Park Service did not have concurrent jurisdiction on Old Highway 41 (Tract 01-119, Cobb County, 1.10 acres); Dallas Road (Tract 01-120, State of Georgia, 3.80 acres); and Powder Springs Road (Tract 01-130, State of Georgia, 0.61 acres) which are within the administrative boundaries of the

### Kennesaw Mountain National Battlefield Park.

This current transfer document amends the 1982 agreement by "extending concurrent jurisdiction over all lands and roadways within the administrative boundaries of Kennesaw Mountain National Battlefield Park" to include but not limited to: lands owned by the United States; lands located on Old Highway 41 (Tract 01-119, Cobb County, 1.10 acres); Dallas Road (Tract 01-120, State of Georgia, 3.80 acres); and Powder Springs Road (Tract 01-130, State of Georgia, 0.61 acres) which are within the administrative boundaries of the Kennesaw Mountain National Battlefield Park; and all roadways encompassed by the administrative boundaries of the park including, but not limited to, jurisdiction over the following roads: Old Highway 41, Ridenhour Road, White Circle, White Road Court, Stilesboro Road, Mossy Rock Road, Kennesaw Mountain Drive, Gilbert Road, Old Mountain Road, Burnt Hickory Road, Dallas Road, Cheatham Hill Drive, John Ward Road, Cheatham Hill Road, and Powder Springs Road.

Frank Catroppa,

Regional Director, National Park Service,  
Southeast Region.

[FR Doc. 91-15376 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-70-M

### Office of Surface Mining Reclamation and Enforcement

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0096), Washington, DC 20503, telephone 202-395-7340.

*Title:* Adoption of State Standards, 30 CFR part 718.

*OMB Approval Number:* 1029-0096.

*Abstract:* Information collected in part 718 of the regulations of the Office of Surface Mining Reclamation and Enforcement are used to determine whether State laws or regulations

contain more stringent standards than the Federal requirements in 30 CFR parts 715, 716 or 717.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of Respondents:* State regulatory authorities.

*Annual Responses:* One.

*Annual Burden Hours:* One.

*Average Burden Hours Per Response:* One.

*Bureau Clearance officer:* Richard L. Wolfe (202) 343-5143.

Dated: May 24, 1991.

John P. Moesso,

Chief, Division of Technical Services.

[FR Doc. 91-15374 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-05-M

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0099), Washington, DC 20503, telephone 202-395-7340.

*Title:* Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs 30 CFR part 733.

*OMB Number:* 1029-0099.

*Abstract:* This part establishes requirements for maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs. The information requested is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

*Bureau Form Number:* 1029-0099.

*Frequency:* On Occasion.

*Description of Respondents:* Any interested person (individuals, businesses, institutions, organizations).

*Annual Responses:* 2.

*Annual Burden Hours:* 1.

*Estimated Completion Time:* 0.5 hour.

*Bureau clearance officer:* Richard L. Wolfe (202) 343-5143.

Dated: May 24, 1991.

John P. Moesso,

Chief, Division of Technical Services.

[FR Doc. 91-15375 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-05-M

### INTERSTATE COMMERCE COMMISSION

[Docket No. AB-77 (Sub-No. 6X)]

#### Bangor and Aroostook Railroad Co.—Abandonment Exemption—in Aroostook County, ME; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 15.89-mile line of railroad between milepost W6.86, near Washburn and milepost W22.75, near Westmanland, in Aroostook County, ME.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 28, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup>

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 8, 1991.<sup>3</sup> Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 18, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Eric M. Hocky, 510 Walnut Street, 1800 Penn Mutual Tower, Philadelphia, PA 19106.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report with addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 3, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, see at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 19, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 91-15329 Filed 6-27-91; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Application**

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 30, 1991, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug

order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987)

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125).....	II
Pentobarbital (2270).....	II
Secobarbital (2315).....	II
Methadone (9250).....	II
Methadone-intermediate (9254).....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).....	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1991.

Dated: June 18, 1991.

Gene R. Haislip,

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

[FR Doc. 91-15427 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-09-M

**Importer of Controlled Substances; Registration**

By Notice dated April 8, 1991, and published in the Federal Register on April 16, 1991 (56 FR 15383), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040).....	II
Opium, Raw (9600).....	II
Poppy Straw (9650).....	II
Poppy Straw Concentrate (CPS) (9670).....	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of

Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 18, 1991.

Gene R. Haislip,

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

[FR Doc. 91-15428 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-09-M

**Importer of Controlled Substances; Registration**

By Notice dated April 8, 1991, and published in the Federal Register on April 22, 1991 (56 FR 16346), Noramco of Delaware, Inc., Division McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, Raw (9600).....	II
Poppy Straw Concentrate (CPS) (9670).....	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 18, 1991.

Gene R. Haislip,

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

[FR Doc. 91-15429 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-09-M

**Importer of Controlled Substances; Registration**

By Notice dated May 16, 1991, and published in the Federal Register on May 28, 1991, (56 FR 24096), Stepan Chemical Company, Natural Products, Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances

Import and Export Act in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated June 18, 1991.

**Gene R. Haislip,**  
Deputy Assistant Administrator, Office of  
Diversion Control, Drug Enforcement  
Administration.

[FR Doc. 91-15430 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-09-M

## Immigration and Naturalization Service

[INS No. 1275-91]

### English Language, American History and Civics, Standardized Naturalization Test

**AGENCY:** Immigration and Naturalization  
Service, Justice.

**ACTION:** Notice of program.

**SUMMARY:** The Immigration and Naturalization Service (Service) is pursuing the development and implementation of a standardized test for naturalization applicants as an alternative means of meeting certain requirements for naturalization as United States Citizens. This notice is to request written proposals from capable entities who are interested in participating in this program. The Service expects the standardized test will facilitate the naturalization of persons who might be otherwise hesitant to apply for naturalization.

**DATES:** Written proposals from parties interested in developing and administering an alternative testing process based on the criteria in the supplementary information will be accepted on or after June 28, 1991.

**ADDRESSES:** Written proposals should be mailed in triplicate to Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act (Act) provides for the naturalization of certain qualified aliens to United States citizenship. Section 312 of the Act provides in pertinent part that applicants for naturalization must demonstrate an understanding of ordinary English literacy and a

knowledge and understanding of the history and form of government of the United States. The Immigration Reform and Control Act of 1986 (IRCA) required the Service to implement a similar test for applicants for permanent residence under section 245a of the Act.

In response to a public notice published in the *Federal Register* on July 13, 1990 (55 FR 28836), to announce the Service's consideration of implementation of a standardized English Language/Citizenship test for naturalization purposes, a total of 11 comments were received from both outside and inside the Service. Upon review and careful consideration of these comments, the following changes were made to clarify and expand on the selection criteria which appeared in draft form in the *Federal Register* on Criterion (3) has been amended to clarify that the "approval" of individual test results relates to the manner in which the results are transmitted to the Service.

Criterion (6) has been amended to enable a testing entity capable of administering a test in more than one state, or operating within or under the supervision of a public school system, to be approved to administer the standardized test.

Criterion (8) has been amended to include the requirement that the testing entity provide the applicant with evidence of having taken the test if results are not provided the same day as the test. The results provided to the Service in individual cases related only to those persons passing the test. The Service will not be advised of the identities of those persons who do not pass the test, and failure of this test will have no effect on a person's ability to retake this alternative test or be separately tested by a Service officer.

Six commenters requested clarification of what would constitute fraud or misrepresentation on the part of the applicant or testing agency and how fraud would be determined. We have determined that it would be inappropriate to specify in advance what specific type of actions would constitute fraud, as this would be seen as limiting the authority of the Service.

Two commenters wished clarification as to the scoring of the written portion of the test, as two sentences were being required to be written, as opposed to only one required for the test under legalization. While approval of scoring methods will be based upon individual proposals submitted, it is intended that the applicant must pass on one of the two sentences.

One commenter requested that the test answers be read to the applicant in

addition to the questions. However, we have determined that the only way to adequately test the applicant's ability to read, would be if he/she made the choice of the answers based upon what is read, not what is also read to him/her. Also the long term integrity of the test requires that there be no question of the tester having influenced the answers of the applicant by the manner in which the answers are read, whether intentional or not.

Five commenters requested that the test either be not restricted to school environments or requested that voluntary agencies be allowed to provide the test. The "environment" in which the test is given is not restricted under the criteria, but will be a factor to be considered in the approval of a testing entity, as it relates to the security of the test. Also, the requirement in criterion (6) that the testing entity have management control of the testing site, personnel and supplies, does not preclude the testing entity from contracting specific services from various local entities provided that control and oversight are maintained.

Four commenters indicated concern either for the amount of the fee or reimbursement for local voluntary agencies. The Service will have no financial liability or stake in the administration of any test. The Service's approval of the fee is solely to insure the reasonableness of the fees charged.

One commenter raised the issue of the length of time for which test results would be valid. An applicant for naturalization must establish eligibility under section 312 at the time of the examination on the application. It is felt that one year is a reasonable amount of time in which to continue to accept the results of a standardized test. Therefore, the test results will be considered valid in connection with a Form N-400 submitted within one year of the date the test is passed.

Any qualified entity may apply to the Service for acceptance as an approved testing entity. The agreement between the Service and the testing entity will be nonfinancial. The Service shall incur no financial liability and intends to make no payments to any entity under this program. The Service agrees to accept the test results from an approved entity as evidence of a naturalization applicant's ability to read and write English and knowledge of the government and history of the United States as required by section 312 of the Act, when said applicant submits an application to file a petition for naturalization within one year of successfully passing an approved test.

The passage of the approved test will not be construed as evidence of ability to speak English.

*Criteria:*

The following criteria and requirements are provided for submission of proposals:

(1) The testing entity must demonstrate experience in developing and administering reliable standard examinations in the English language and civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency).

(2) The written test will be constructed in English as a twenty (20) question multiple choice pass/fail test, with two dictated sentences to be written in English. The test will be constructed so as to be completed in no more than forty-five (45) minutes. The test questions and the dictated sentences will be read aloud in English to the applicants by a qualified proctor in person, or audio cassette or video tape. The answers will not be read to the applicants.

(3) The test questions and scoring standards for test scores will be approved by the Service. The scoring standard must provide that the minimum passing score for the multiple choice questions will be not less than 60 percent. The scoring standard must also provide for satisfactory completion of one of the two sentences. The test questions or scoring standards will not be changed by the testing entity unless approved or directed by the Service. The test results submitted by applicants to the Service are not valid until verified by the Service. The testing entity must develop, and the Service must concur in any form of electronic or manual transfer of test result data from the entity to the Service.

(4) The content of the test questions, with the exception of current political office holders, must come from the latest edition of the Service's Federal Citizenship Textbook Series. Only the M-287, M-289, M-291 and English as a Second Language Textbook Versions (M-302, M-303, M-304) are to be used. These textbooks can be purchased from the U.S. Government Printing Office.

(5) Testing entities are required to field test the examination, in cooperation with the Service, prior to implementation. The testing entity shall notify the Service of the opening of a new site or closing of a site within ten business days of such action.

(6) The testing entity must be capable of administering the examination in more than one state (to include U.S.

Virgin Islands, Guam, and Puerto Rico), or operate within or under the supervision of a public school system. In administering the examination the entity must have management control over the testing schedule, test location procurement and management, hiring authority over testing personnel, and responsibility for needed supplies. Service approval cannot be transferred to an unapproved entity for administration of tests. The testing entity must ensure, if concurrently providing test preparation instruction, that test standards are strictly followed. The fee charged will be determined by the approved entity with the concurrence of the Service. Justification of the fee amount must be submitted with any proposal. If the applicant fails the test he or she will be given the opportunity to retest one time at no additional costs. The retest shall be a variation of the initial test.

(7) The Service will maintain a list of approved testing entities and will make such listing available to the public upon request. The testing entity is required to provide reasonable public notice of the test location and schedule. At least fifteen days prior to the beginning of each month, the testing entity shall provide the Service with a report of the scheduled test dates by location for the coming month.

(8) The approved testing entity is responsible for scoring the examination and shall provide the results to the applicant and the Service by the fifteenth business day from the date of the test. If test results are not provided to the applicant on the day of the test, a receipt or other evidence of having taken the test will be provided.

(9) The testing entity shall provide test security and test integrity subject to review and approval by the Service.

(10) The testing entity will be responsible for verifying the identity of the person taking the test.

(11) The Service reserves, without notice, the right of onsite inspection to determine the continued reliability and integrity of the test and testing procedures.

(12) The Service reserves the right to remove an entity from the approved register for good cause. The testing entity will be notified in writing of its removal from the approved register, and must cease examination immediately upon receipt of such notice. No appeal lies from the decision to remove, but a request for reconsideration may be entertained by the Assistant Commissioner for Adjudications, Examinations Branch, Central Office, Washington, DC.

(13) The testing entity must provide the Service with quarterly management reports throughout participation in the program. The reports shall include, but are not limited to, monthly statistics by a testing site on the number of applicants who take the test, and the number of persons who pass and fail.

Dated: April 30, 1991.

Gene McNary,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 91-15393 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-10-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 Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions:

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### New Collection

Bureau of Labor Statistics, Hours at Work—Response Analysis Survey, One Time Only, Businesses and other private establishments; Small businesses or organizations, 600 responses, 150 hours, 15 minutes per response, no written forms.

Ratios of hours at work to hours paid are needed to measure labor input for productivity statistics. A response analysis survey assesses the conceptual accuracy of ratios. This information is used in BLS labor and multifactor productivity measures published annually and quarterly. Respondents are randomly selected from private non-agricultural establishments.

#### Revision

Occupational Safety and Health Administration, Accident Prevention Tags, State or local governments; Businesses or other for-profit; Federal agencies or employees; small businesses or organizations.

As the result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for paperwork activities involving the employer and the third party (employee) disclosure contained in 29 CFR 1910.145(f)(3).

Powered Platform, Businesses or other for-profit.

As the result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for those

paperwork activities involving the employer and the third party (employee) disclosure contained in:

29 CFR 1910.66 (e)(9),  
29 CFR 1910.66(f)(5)(i)(c),  
29 CFR 1910.66(f)(5)(ii)(N),  
29 CFR 1910.66(f)(7)(vi),  
29 CFR 1910.66(f)(7)(vii),  
29 CFR 1910.66(f)(7)(viii),  
29 CFR 1910.66(f)(7)(ix).

#### Reinstatement

Assistant Secretary for Occupational Safety and Health, Initial and Renewal Application for Training and Education Grants, 1218-0020, Annually, Non-profit institutions, 76 respondents; 4,811 total burden hours; 63.3 average hours per response.

Applications are submitted by non-profit organizations interested in participating or continuing in OSHA training and education grants programs. It is used by OSHA staff to select organizations which can effectively carry out the objectives of the program. The application becomes part of the grant award document for successful applicants.

Signed at Washington, DC this 25th day of June, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91-15476 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-22-M

#### Employment Standards Administration, Wage and Hour Division

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1,

appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., room S-3014,  
Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

#### Volume I

District of Columbia, DC91-1(Feb. 22, 1991).	p.79, pp.84-86
Florida, FL91-28(Feb. 22, 1991).	p.165, p.166
Georgia, GA91-33(Feb. 22, 1991).	p.291, p.292
Maryland, MD91-2(Feb. 22, 1991)..	p.475, pp.476-477
MD91-15(Feb. 22, 1991).	p.507, p.508
New Jersey, NJ91-2(Feb. 22, 1991).	p.701, p.702
New York: NY91-9(Feb. 22, 1991)...	p.869, p.870
NY91-10(Feb. 22, 1991).	p.873, p.874
NY91-13(Feb. 22, 1991).	p.901, pp.902-903.
Pennsylvania, PA91- 8(Feb. 22, 1991).	p.1029, pp.1030- 1033
Tennessee, TN91-2(Feb. 22, 1991).	p.1195, p.1196

#### Volume II

Iowa IA91-13(Feb. 22, 1991).	p.63, p.64
Illinois IL91-16(Feb. 22, 1991)...	p.215, pp.216-218, 224
IL91-17(Feb. 22, 1991)...	p.225, pp.226, 229- 232
IL91-16(Feb. 22, 1991)...	p.236, p.237, pp.238-240

#### Kansas:

KS91-6(Feb. 22, 1991) ...	p.363, p.364
KS91-8(Feb. 22, 1991) ...	p.373, p.376
Michigan, MI91-4(Feb. 22, 1991)	p.491, p.492

Nebraska NE91-2(Feb.  
22, 1991).

#### Texas:

TX91-2(Feb. 22, 1991)...	p.1017, p.1018
TX91-19(Feb. 22, 1991).	p.1076, pp. 1068
TX91-51(Feb. 22, 1991).	p.1167, p.1168

#### Volume III

Alaska AK91-1(Feb. 22,  
1991).

#### Idaho:

ID91-1(Feb. 22, 1991)....	p.207, pp.208-209
ID91-3(Feb. 22, 1991)....	p.221, p.222

Montana, MT91-6(Feb.  
22, 1991).

Nevada NV91-1(Feb.  
22, 1991).

Washington, WA91- p.451, pp.452-476  
1(Feb. 22, 1991).

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act's". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 24th day of June 1991.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 15370 Filed 6-27-91; 8:45 am]

**BILLING CODE 4510-27-M**

### Employment and Training Administration

#### Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,709; *Gray Envelope Manufacturing, Avenel, NJ*

TA-W-25,608; *Rockwell International Corp, T/A Div., New Castle, PA*

TA-W-25,725; *Twin Disc, Inc., Racine, WI*

TA-W-25,662; *Connecticut Manufacturing Co., Inc., Waterbury, CT*

TA-W-25,645; *F.L. Smith Co., Inc., Duncansville, PA*

TA-W-25,730; *American Nickeloid, Peru, IL*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,686; *Snap-On Tools Corp., Mt. Carmel, IL*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,720; *P.I.E. Nationwide, Inc., Kansas City, MO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,864; *Electronic Services, Inc. (DBA ESI), Portland, OR*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,751; *Maxwell House Coffee Co., Hoboken, NJ*

Increased imports did not contribute importantly to worker separations at the firms.

TA-W-25,728; *Weyerhaeuser Co., North Bend, OR*

U.S. imports of Logging (Softwood & hardwood) declined in 1990 compared with 1989 & in the first two months of 1991 compared with the same comparable time period in 1990.

TA-W-25,705; *Chicago Cutlery Co., New Hope, MN*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,721; Reading & Bates Drilling Co., Sovereign Explorer Rig, Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,759; Unibar Drilling Fluids, Inc., Rocky Mountain Div., Denver, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,743; DST Systems, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,739; Chapparel Coal Corp., Pikesville, KY

U.S. imports of coal are negligible.

#### Affirmative Determinations

TA-W-25,633; S & M Manufacturing (SERBIN), Fayetteville, TN

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,678; Liz Ann Manufacturing Co., New Braunfels, TX

A certification was issued covering all workers separated on or after April 3, 1990 and before September 30, 1990.

TA-W-25,746; INMAC Datacom Div., San Jose, CA

A certification was issued covering all workers separated on or after April 19, 1990.

TA-W-25,688; Straits Forest Product, Inc., Amanda Park, WA

A certification was issued covering all workers separated on or after March 19, 1990 and before December 31, 1990.

TA-W-25,689; Straits Forest Products, Inc., Port Angeles, WA

A certification was issued covering all workers separated on or after March 19, 1990 and before December 31, 1990.

TA-W-25,737; Cable Electric Products, Inc., Providence, RI

A certification was issued covering all workers separated on or after April 8, 1990.

TA-W-25,660; Atlas Powder Co., Tamaqua, PA

A certification was issued covering all workers separated on or after April 2, 1990.

TA-W-25,723; Sullcraft Industries, Rahway, NJ

A certification was issued covering all workers separated on or after April 6, 1990 and before December 31, 1990.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 24, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-15477 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

#### [TA-W-23, 528]

#### Hawkins Oil and Gas, Inc., Tulsa, OK; Negative Determination on Reconsideration

By order dated April 9, 1991, the United States Court of International Trade (USCIT) in *Former Employees of Hawkins Oil & Gas. v. U.S. Secretary of Labor* (USCIT 90-02-00083) remanded this case to the Department for further investigation.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated by a survey of the workers' firm' customers. The Department's surveyed the major customers of Hawkins in 1988 and 1989. The survey revealed that none of the respondents imported crude oil or natural gas during the period applicable to the petition. A response from another investigation was added to the record for one of the customers who did not respond in the subject survey. That customer indicated that no natural gas was imported but crude oil was imported during the survey period.

On reconsideration the Department obtained audited financial statements for the years 1988 and 1989. The audited financial statements show most of Hawkins' 1989 revenues came from management fees. The audited statements also show that Hawkins had increased revenues from management fees, oil and gas sales, rental income and lease and equipment sales in 1989 compared to 1988. The oil and gas revenues accounted for about 34 percent of total revenues in 1989 and only about 15 percent of the oil and gas revenues are attributable to oil. Only oil and gas sales would provide a basis for a worker group certification and the audited

statements show an increase in oil and gas revenues. Further, the company reported an increase in crude oil sales in the first nine months of 1989 compared to the same period in 1988.

The Department reviewed its initial customer survey and found that it had correctly contacted the appropriate contact persons for each customer provided by Hawkins. On reconsideration, the Department surveyed the two non-responding customers and found that they did not import natural gas and either did not import crude oil or had increased purchases of crude oil from Hawkins during the relevant period. Therefore, such a finding could not provide a basis for certification for Hawkins.

To summarize then, none of the major customers imported natural gas and only one imported crude oil but that respondent had increased purchases from Hawkins during the period applicable to the petition. Also, Hawkins had increased oil and gas sales revenues in 1989 compared to 1988 and increased oil revenues in 1989 compared to 1988.

#### Conclusion

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to workers and former workers of Hawkins Oil & Gas, Inc., Tulsa, Oklahoma.

Signed at Washington, DC this June 24, 1991.

Robert O. Deslongchamps

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15478 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

#### [TA-W-25,601]

#### Lightolier, Inc., Norwich, CT; 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 21, 1991, applicable to all workers of Lightolier, Inc., Norwich, Connecticut. The notice was published in the *Federal Register* on June 5, 1991 (56 FR 25699).

At the request of the State Agency the Department reviewed the subject certification and found that several workers are being retained for close down operations beyond the March 31, 1991 termination date. Therefore, the certification is amended by deleting the

old termination date and inserting a new termination date of September 1, 1991. The amended notice applicable to the subject firm is hereby issued as follows:

"All workers of the Norwich, Connecticut plant of Lightolier, Inc., engaged in the production of track lighting fixtures who became totally or partially separated from employment on or after January 1, 1991 and before September 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 20th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-15479 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

### Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Michigan

This notice announces the ending of the Extended Benefit Period in the State of Michigan, effective on June 15, 1991.

#### Background

The Federal-State Extended Unemployment Compensation Act of 1970 (28 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer

at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Michigan on March 10, 1991, and has now triggered off.

#### Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on May 25, 1991, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for the week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 15, 1991.

#### Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contact the nearest State employment service office in their locality.

Signed at Washington, DC on June 20, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-15480 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

### Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies (SESAs). The UIPLs described below are published in the Federal Register in order to inform the public.

#### UIPL No. 1-86, Change 1

This directive provided additional information regarding the Department of Labor's (Department) interpretation of

the phrase "permanently residing in the United States under color of law" as used in section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA).

#### UIPL 26-90

This directive advised SESAs of the Department's concerns regarding the increasing technicality and complexity of Unemployment Insurance (UI) Appeals hearings and provided draft legislation which might assist the SESAs in resolving the problem.

#### UIPL 28-90

This directive advised the States of the Department's position on the issuance of subpoenas in interstate appeals.

#### UIPL 12-91

This directive advised the State agencies of the provisions of the Omnibus Budget Reconciliation Act of 1991, Public Law 101-508, which affect the Federal-State Unemployment Compensation Program.

#### UIPL 14-91

This directive informed States of the amendment made to section 3304(a)(14)(A), FUTA, by Section 162(e)(4) of Public Law 101-649, the Immigration Act of 1990.

Dated: 6/20/91

Roberts T. Jones

Assistant Secretary of Labor.

CLASSIFICATION: UI

CORRESPONDENCE SYMBOL: TEURL

DATE: February 16, 1989.

EXPIRATION DATE: June 30, 1991

DIRECTIVE: Unemployment Insurance

Program Letter No. 1-86 Change 1

TO: All State Employment Security Agencies

FROM: Donald J. Kulick, Administrator for

Regional Management

SUBJECT: Aliens Permanently Residing in the United States Under Color of Law (PRUCOL)

1. *Purpose.* To provide additional information regarding the Department of Labor's interpretation of the phrase "permanently residing in the United States under color of law" as used in section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA).

2. *References.* Section 3304(a)(14)(A), FUTA; UIPL 1-86, dated October 28, 1985 (51 FR 29713, August 20, 1986); UIPL 12-87, dated March 11, 1987 (52 FR 3889, February 2, 1987); UIPL 12-87, Change 1, dated September 28, 1988; UIPL 6-89, dated December 2, 1988; Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—P.L. 94-566 (including Supplement #3, Questions and Answers, issued May 6, 1977).

3. *Background.* Section 3304(a)(14)(A), FUTA, requires, as a condition for the

Secretary of Labor's certification of a State to the Secretary of the Treasury, that the State law provide that:

compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

Simply put, base period wages may not be used in a monetary determination on a claim for unemployment benefits unless the wages were earned while the alien was in one of the three eligible categories specified in section 3304(a)(14)(A) and the State law. The three categories of aliens are:

- Aliens lawfully admitted for permanent residence at the time the services were performed.
- Aliens lawfully present for purposes of performing the services.
- Aliens permanently residing in the United States (U.S.) under color of law at the time the services were performed.

A State unemployment compensation law is not required to contain any of the three categories of eligible aliens. However, a State may not broaden the definition of any of the three categories of eligible aliens.

UIPL 1-86 set forth the Department of Labor's interpretation of these three eligible categories of aliens. Since the issuance of UIPL 1-86, the Department has noted continuing problems with the interpretation of the third category, aliens "permanently residing in the United States under color of law" (PRUCOL). The purpose of this program letter is to supplement UIPL 1-86 by providing additional information, based on cases which have come to the Department's attention, to ensure that this third category is uniformly interpreted and applied.

4. *Interpretation.* The phrase "permanently residing in the United States under color of law" applies only to the following classes of aliens:

a. Aliens admitted to the U.S. as conditional entrants under section 203(a)(7) or as parolees under section 212(d)(5) of the Immigration and Nationality Act (INA). Section 3304(a)(14)(A), FUTA, specifically includes these aliens in the PRUCOL category. Note: Section 203(a)(7) was repealed by section 203(c)(3) of the Refugee Act of 1980 (P.L. 96-212) and replaced under Section 201(b) of the Refugee Act with sections 207 and 208. Under section 203(h) of the Refugee Act, section 203(a)(7) is applicable prior to April 1, 1980. In addition, section 203(h) provides that, effective April 1, 1980, any reference in Federal law to section 203(a)(7) is considered a reference to new sections 207 and 208. INA section 207 relates to refugees and INA section 208 to asylees, both of which are, therefore, considered PRUCOL under section 3304(a)(14)(A), FUTA.

b. Aliens presumed to have been lawfully admitted for permanent residence even

though they lack documentation of their admission to the United States. See Immigration and Naturalization Service (INS) regulations at 8 CFR part 101. A list of these groups and the documents that are issued to them by the INS are provided in Supplement #3 of the Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566.

c. Aliens who, after a review of their circumstances under INS statutory or regulatory procedures, have been granted a lawful immigration status that allows them to remain in the U.S. for an indefinite period of time.

To be in PRUCOL status, an alien must meet a two-part test. First, the alien must be residing in the U.S. "under color of law." For an alien to be residing "under color of law," the INS must know of the alien's presence, and must provide the alien with written assurance that enforcement of deportation is not planned. Second, the alien must be "permanently residing" in the U.S. This term is not defined in FUTA. However, "permanent" is defined in section 101(a)(31), INA:

The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

Under the INA, authority for determining the alien's status is vested in the Attorney General. The "relationship" in the definition of "permanent" therefore contemplates permission by the INS for the alien to remain in the U.S. for an indefinite period of time. An alien cannot be residing permanently without this relationship. Therefore, an alien living in the U.S. who has not received assurance from the INS that departure will not be enforced is not permanently residing. INS inaction is *not* sufficient to show that an alien is in PRUCOL status and States may not interpret it as such. As stated in UIPL 1-86:

\* \* \* without affirmative action by the INS, any alien, regardless of the legality of entry, could become eligible to receive unemployment compensation simply by filing an application for permanent residence or suspension of deportation. Congress has indicated no intent to include such aliens under the provisions of section 3304(a)(14)(A), FUTA. In short, the filing of an application alone cannot change an alien's resident status. The INS must affirmatively determine each alien's status in accordance with its authority and the alien's specific circumstances.

That the mere filing of an application does not make an alien a permanent resident under color of law was confirmed in *Sudmir v. McMahon*, 767 F. 2d 1456 (9th Cir. 1985). In that case, the United States Court of Appeals for the Ninth Circuit upheld as reasonable and permissible California and Federal positions that an "applicant" for asylum status is not in PRUCOL status. The Court noted that the requirement of permanency "does not embrace transitory, inchoate, or temporary relationships in a process that gives rise to the possibility of \* \* \* authorization [to remain in the U.S.] reside

temporarily." *Id.* Finally, "Their presence is tolerated during the period necessary to process their applications; it has not been legitimated by any affirmative act." *Id.* Whether the alien is applying for a lawful immigration status for the first time, or is applying for adjustment of an existing status, the principle is the same: the mere filing of an application does not confer PRUCOL status.

This principle was further confirmed in *Esparza v. Valdez*, 612 F. Supp. 241 (D. Colo. 1985), appeal dismissed, No. 85-2187 (10th Cir. Nov. 29, 1988). In that case, the United States District Court for Colorado dismissed the claim that aliens are in PRUCOL status if the alien's presence in the U.S. is known to the INS and the INS has acquiesced in the continued residence of the alien by some action or inaction. The Court stated that aliens are not in PRUCOL status simply "by the filing of some application." 612 F. Supp. at 244.

5. *Discussion of Specific Groups of Aliens.* In addition to those groups of aliens specifically cited in Section 3304(a)(14)(A) and those groups treated in Supplement #3 of the Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566, other groups of aliens have been identified which may or may not be in PRUCOL status. Following is a decision of these groups.

a. *Aliens Possessing Work Authorization.* Aliens who possess work authorization fall under the second category of Section 3304(a)(14)(A), FUTA, "lawfully present for purposes of performing such services." These aliens may also be in PRUCOL status, but only if they independently meet the two-part test explained above. If State law contains the category "lawfully present for purposes of performing such services," the State agency need not determine whether aliens in this category are also in PRUCOL status. However, if State law does not contain the second category, but does contain the PRUCOL category, or if the alien does not possess work authorization, then it will be necessary to determine if the alien is in PRUCOL status. In reaching this determination, the State may not expand the definition of PRUCOL to include aliens who merely possess work authorization. (Evidence of authorization to work is, however, required to establish legal availability for work subsequent to the enactment of the Immigration Reform and Control Act on November 6, 1988; see UIPL 12-87.)

b. *Aliens Granted Voluntary Departure or Extended Voluntary Departure.* Aliens granted voluntary or extended voluntary departure are usually assigned a definite date for departure from the U.S. Although the departure date may be subject to extension, or actually extended, these aliens are not "permanent" residents because their presence is limited in duration. As the court stated in the *Sudmir* case, a deferred or extended voluntary departure by definition is a "transitory, inchoate, or temporary" relationship. *Sudmir* at 1461.

Aliens who receive extensions of voluntary departure dates while their applications for legal residence are pending with the INS also do not become permanent residents. The

administrative process which may culminate in authorization to remain in the U.S. does not in itself confer any status or right to reside in the U.S. permanently. AS with the aliens in the *Sudomir* case, these aliens' "presence is tolerated only during the period necessary to process their applications; it has not been legitimated by any affirmative act." *Sudomir* at 1462. While these aliens may be residing under "color of law," they are not "permanently residing" and may not be considered PRUCOL.

c. *Applicants for Adjustment of Status.* Aliens do not become PURCOL by virtue of applying for adjustment of their status. An alien applying for adjustment of status under sections 245, 245A, or 210 of the INA also would not qualify as PRUCOL since the application itself does not constitute a change or improvement of status. If these applicants are eligible for unemployment benefits, it must be because of their present status, which they are applying to have adjusted.

d. *Asylees, Refugees and Applicants for such Status.* Aliens granted the status of asylee or refugee are PRUCOL, but, as discussed above, applicants for a particular status do not receive the benefits of that status. To be granted asylum under section 208, INA, the INS must make a specific determination that the alien faces persecution or has a well-founded fear of persecution. As noted in *Sudomir* at 1462, the presence of applications for asylum is "tolerated during the period necessary to process their applications; it has not been legitimated by any affirmative act." This principle applies also to applicants for refugee status under section 207, INA.

e. *Applicants for and Persons Who Have Received Withholding of Deportation.* As with other applicants for a particular status, aliens do not become PRUCOL by applying for withholding of deportation under section 243(h), INA. The temporary nature of their residence during the application process is underscored by the fact that an alien is not entitled to relief under section 243(h) if the INS finds that he committed certain acts of persecution; was convicted of a particularly serious crime constituting a danger to the U.S.; committed a serious neopolitical crime prior to arrival in the U.S.; or constitutes a danger to the security of the U.S. However, aliens who have been notified in writing by the INS that deportation action will not be taken against them or that such action is indefinitely delayed, may be considered PRUCOL.

f. *Cuban and Haitian Entrants.* Citizens of Cuba or Haiti who entered the United States at the time of the Mariel boat lift (and before January 1, 1982) and afforded the status of "Cuban/Haitian Entrant (Status Pending)" are in PRUCOL status because they are treated as parolees. However, not all Cuban and Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, P.L. 96-422, are afforded the status of Cuban/Haitian Entrant (Status Pending). Those aliens not granted this status may be the subject of exclusion or deportation proceedings or may be applicants for asylum. If they are in any of the three categories specified under section 3304(a)(14)(A), FUTA, it is by virtue of other

INS actions (such as the granting of work authorization or the adjustment of status to that of an alien lawfully admitted for permanent residence under section 202 of the Immigration Reform and Control Act of 1986, P.L. 99-603, (IRCA)), not by simply being Cuban or Haitian entrants.

g. *Visa Applicants and Beneficiaries of Visa Petitions.* As with other applicants for a particular status, aliens do not become PRUCOL by apply for a visa.

Beneficiaries of approved or pending visa petitions are not PRUCOL. The INA provides that preference consideration be given to persons with close family ties in the U.S. and to persons with certain job skills. However, the mere filing of a petition on an alien's behalf does not create a lawful status. Indeed, some beneficiaries may not even be in the U.S. at the time the petition is filed. Moreover, "approval" of a visa petition on behalf of an alien merely verifies a relationship between the petitioner and the beneficiary; approval is merely the first step in the application process. Therefore, even an alien with an "approved" petition is simply participating in a process that ultimately may result in authorization to remain permanently in the U.S. A pending petition may be meritless and cannot be the basis for determining the alien's immigration status.

Once the visa petition has been approved, some aliens are required to go to the American consul in their country of origin for an interview. At that juncture, the visa is either issued or denied. See 22 CFR part 42. If the visa is issued, the individual is required to appear at the port of entry for admission. Admission may be disapproved for a number of reasons. If admitted, the individual is "lawfully admitted for permanent residence," the first category of eligible aliens under section 3304(a)(14)(A). Other beneficiaries of approved visa petitions are allowed to stay in the U.S. and file an application for adjustment of status under section 245, INA. As with other applicants for a particular status, these aliens are not in PRUCOL status. Finally, if the application is granted, the beneficiary is adjusted to the status of "lawfully admitted for permanent residence" and since the alien is already in the U.S., the alien need not be "admitted."

h. *Applicants for Suspension of Deportation.* As with applicants for a particular status, aliens do not become PRUCOL by applying for suspension of deportation under Section 244(a), INA. As with other applicants, the presence of these aliens is temporary, as they merely are participating in an administrative process with the possibility of receiving authorization to remain in the U.S. Further, these aliens are not present under color of law while in deportation status.

In contrast, aliens whose deportation is suspended under section 244(a) have their status adjusted to "lawfully admitted for permanent residence." Such aliens are, therefore, in the first category of section 3304(a)(14)(A), FUTA, effective upon issuance of the adjustment of status by the INS.

i. *Persons under Orders of Supervision.* Aliens subject to orders of supervision under section 242(d), INA, are not in a lawful immigration status and have already been

issued a final order of deportation. They are subject to deportation when appropriate arrangements are completed. These aliens are neither "permanently residing" nor residing "under color of law" and are therefore not in PRUCOL status.

j. *Persons Subject to INS Orders to Show Cause, But Not Under a Final Order of Deportation.* Orders to show cause under 8 CFR 242.1 are used by the INS to commence the deportation process. Such an alien is neither "permanently residing" nor residing under "color of law" solely by reason of being in such status. If such aliens are in PRUCOL status, it is by virtue of the status which may be revoked during this process.

k. *Persons under Deferred Action Status.* Aliens under deferred action status who have been notified by the INS in writing that deportation will not be pursued at the present time are in PRUCOL status, but only from the date such notification is effective and until such notification is revoked or superseded by further INS action.

l. *Aliens in the U.S. With the "Knowledge and Acquiescence" of the INS.* INS knowledge of, and acquiescence to, an alien's presence in the U.S. is insufficient to render the alien either permanently residing or residing under color of law. Rather, an alien is in PRUCOL status only if the INS has affirmatively exercised its discretion against deportation and granted permission to the alien in writing to reside in the U.S. indefinitely. As the *Esparza* court stated in rejecting the "knowledge and acquiescence" test, an alien is not in PRUCOL status simply "by the filing of some application." *Esparza* at 244.

m. *Aliens Who Applied for, or Who Intended to Apply for Legalization Under Section 245A or Section 210, INA, as Added by the Immigration Reform and Control Act of 1986 (IRCA).* The IRCA amendments to the INA had no effect on the definition of PRUCOL. As with other applicants for a particular status, aliens do not become PRUCOL by applying for, or intending to apply for, adjustment of status under the legalization programs established by the IRCA.

Sections 245A(e) and section 210(d) of the INA, as amended by IRCA, prohibit the Attorney General from deporting certain aliens who intend to apply for or who have applied for adjustment of status under the legalization programs established by IRCA for limited periods. These aliens are not PRUCOL. The temporary nature of these aliens' residence is underscored by the fact that if the application is denied the alien is subject to deportation. Applicants for amnesty under Section 245A(a), INA, may obtain a new status, lawfully admitted for temporary residence (LTR). In addition, special agricultural workers may apply for status as lawfully admitted for temporary residence under Section 210(a)(1), INA. Aliens in LTR status are not PRUCOL because they are not permitted to remain in the U.S. indefinitely. Under the INA, these aliens will either have their status adjusted to that of lawfully admitted for permanent residence or they will be subject to deportation. Further, aliens who have been lawfully admitted for temporary

residence cannot be said to be permanently residing. Aliens applying for status under these legalization programs may, however, be lawfully present for purposes of performing services under section 3304(a)(14)(A), FUTA. Refer to UIPL 12-87 and UIPL 12-87, Change 1, for a discussion of these aliens. Also, refer to UIPL 6-89, which discusses provisions of the Foreign Relations Authorization Act, P.L. 100-204, which establishes another class of aliens who are eligible to apply for temporary residence status.

6. *Action Required.* State administrators are requested to take necessary action to assure that the State law is applied consistently with section 3304(a)(14)(A), FUTA, as interpreted in this program letter.

7. *Inquiries.* Please direct questions to the appropriate Regional Office.

Classification: UI

Correspondence Symbol: TEURL

Date: April 26, 1990

Expiration Date: April 30, 1991

Directive: Unemployment Insurance Program Letter No. 26-90

To: All State Employment Security Agencies  
From: Donald J. Kulick, Administrator for Regional Management

Subject: Requirement that Unemployment Insurance (UI) Appeals Hearings be Simple, Speedy and Inexpensive

1. *Purpose.* To advise State Employment Security Agencies (SESAs) of the Department of Labor's (DOL) concerns regarding the increasing technicality and complexity of UI Appeals hearings and to provide draft legislation which may assist the SESAs in resolving this problem.

2. *References.* Sections 302(a), 303(a)(1), and 303(a)(3) of the Social Security Act (SSA), and A Guide to Unemployment Insurance Benefit Appeals.

3. *Background.* A number of courts and administrative bodies have issued decisions precluding an individual in a non-UI case from relitigating an issue previously decided in a UI case. These decisions have been based on the doctrine of collateral estoppel, also called issue preclusion. Also, some courts and administrative bodies have permitted findings of fact or decisions in a UI case to be used as evidence of a finding in subsequent non-UI proceedings. Because the parties are concerned that the results of the UI hearing will either affect or be binding in subsequent non-UI proceedings, the UI hearing becomes more technical and complex, and therefore most costly and time consuming, than is needed for purposes of determining UI issues. Because UI hearings are intended to be simple, speedy and inexpensive, such technical and complex proceedings could create issues under Federal law requirements. This UIPL addresses this problem and provides draft language should a State determine that legislation is necessary to preclude conflicts with Federal law requirements.

4. *Definitions.* The doctrine of collateral estoppel prevents a party from relitigating an issue which has already been decided in a prior action, generally between the same parties. For example, an individual is dismissed from employment and files a claim for UI benefits. The State agency denies benefits based on its determination that the

individual was discharged for misconduct. The individual appeals the denial of UI benefits, a hearing is held and the denial is affirmed. The individual also files a civil rights action under Title VII of the United States Civil Rights Act of 1964. The court hearing the civil rights action then rules that the issue of the reason for the individual's discharge has already been decided in another forum and therefore cannot be relitigated.

5. *Federal Law Requirements.* Section 303(a)(1), SSA, requires that the UI law of a State provide for "[s]uch methods of administration \* \* \* as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." Section 303(a)(3), SSA, requires that a State law provide for "[o]pportunity for a fair hearing before an impartial tribunal for individuals whose claims for unemployment compensation are denied." These provisions have been interpreted to require that appeals hearings are to be simple and that a claimant should be able to understand the appeals procedures without the need of securing legal representation to protect his or her rights. (See page 5 of A Guide to Unemployment Insurance Benefit Appeals.) Because of the relatively small amount of money involved, it would place a financial burden on most claimants if a State's appeals hearing became so complex that claimants would have to secure legal representation to protect their rights to benefits.

Therefore, to comply with the requirements of sections 303(a)(1) and 303(a)(3), appeals hearings must be simple, speedy, and inexpensive.

Finally, under section 302(a), SSA, the Secretary of Labor is required to provide to States only such amounts as are necessary for the proper and efficient administration of the State's UI law. In this regard, the funding formulas utilized for appeals functions contemplate only the informal hearings required by section 303(a)(1) and (3).

6. *Effect on the UI Program.* The UI appeals hearing will likely occur prior to other hearings concerning employer-employee disputes. Therefore, participants in the UI hearing may be concerned about the effects of the UI hearing on subsequent non-UI litigation since collateral estoppel may be applied in a non-UI forum or findings of fact made by the hearing officer or the officer's decision may be introduced as evidence. In anticipation of this, parties to a UI claim may feel obligated to assure that issues are addressed in far greater depth than is normally required for a UI hearing. This results in complex and lengthy hearings in which both claimants and employers may require legal representation and which slow down the appeals process. Consequently, formal and technical hearings may occur inconsistent with sections 303(a)(1) and 303(a)(3), SSA.

SESAs which find that appeals hearings have become more complex and technical than is required to determine a UI claim should take action to assure that UI hearings remain simple, speedy, and inexpensive. One approach the SESAs may take is to seek legislation prohibiting the application of

collateral estoppel to subsequent non-UI proceedings, or to prohibit the introduction as evidence of any appellate decision or finding of fact made by the UI agency. Several States have already taken this approach. To this end, the following draft language is provided:

No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this Act may be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum, except proceedings under this Act, regardless of whether the prior action was between the same or related parties or involved the same facts.

7. *Action Required.* SESAs are requested to examine their appeals process to determine whether UI hearings are speedy, inexpensive and informal. If they are not, the State should take appropriate action.

8. *Inquiries.* Questions should be directed to the appropriate Regional Office.

Classification: UI

Correspondence Symbol: TEURL

Date: May 30, 1990

Expiration Date: June 30, 1991

Directive: Unemployment Insurance Program Letter No. 28-90

To: All State Employment Security Agencies  
From: Donald J. Kulick, Administrator for Regional Management

Subject: Interstate Appeals and the Issuing of Subpoenas

1. *Purpose.* To advise States of the Department of Labor's position on the issuance of subpoenas in interstate appeals.

2. *References.* Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA), Section 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA), and the Interstate Benefit Payment Plan.

3. *Background.* In a case pending in Federal court (*Saltz v. Tennessee Department of Employment Security et al.* No. DR-89-CA-45 (W.D. Texas)), an unemployment insurance claimant is alleging, among other things, that due process was denied when the liable State in an interstate claim advised him it had no power to enforce a subpoena to an employer in another State concerning separation information the claimant believed relevant. (It should be noted the State also determined the information at issue was irrelevant to the claim for unemployment insurance.) Although one State cannot enforce a subpoena in another, it is otherwise possible to obtain necessary evidence for interstate claims. This UIPL is issued to advise States of relevant Federal law requirements and the procedures to follow when the liable State determines that information relevant to a hearing on appeal is necessary.

The applicable Sections of Federal law are:

a. Section 303(a)(1), SSA, requires, as a condition of a State receiving administrative grants, "[s]uch methods of administration \* \* \* as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."

b. Section 303(a)(3), SSA, which requires "[o]pportunity for a fair hearing, before an impartial tribunal, for all individuals whose

claims for unemployment compensation are denied."

c. Section 3304(a)(9)(A), FUTA, which requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that "compensation shall not be denied or reduced to an individual solely because he files a claim in another State \* \* \* or because he resides in another State \* \* \* at the time he files a claim for unemployment compensation."

Read together, Sections 303(a)(1) and 303(a)(3), SSA, require the State agency to conduct an informal hearing complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with its unemployment compensation law. The official conducting the hearing must assist the parties in the discovery of facts and, if necessary, take the initiative in the discovery of information. Further, to receive the "fair hearing" required by Section 303(a)(3), it is evident that a claimant must have means of requesting production of evidence which affects eligibility and the State must have means of compelling the production of this evidence. These requirements apply equally to interstate and intrastate claims and to both lower and higher authority appeals.

A subpoena may be required to obtain the information necessary to fulfill these requirements. A subpoena is a legal order requiring a person to appear at a hearing or to produce specific material. Subpoenas represent a compulsory process for obtaining evidence. A party's request for issuance of a subpoena should be granted, unless it is clear that such a request is unreasonable, frivolous, made for the purpose of harassment, not relevant to a determination of unemployment insurance eligibility, or is not needed to secure attendance of a witness or production of material. If it is clear to the State that production of necessary evidence must be compelled, the State should not wait for a party's request for a subpoena before taking steps to obtain the information.

In addition, section 3304(a)(9)(A), FUTA, requires that benefits shall not be denied to a claimant solely because he resides in another State at the time of filing. If a claimant is denied benefits because the liable State has failed to obtain subpoenaed information in the belief that it has no power to obtain such information from another State, the failure could result in a denial of benefits simply because the claim was an interstate claim.

4. *Application.* If a claimant or employer in an interstate claim requests a subpoena be issued, the liable State hearing officer (or other appropriate official) will rule on the necessity of obtaining such information for a determination under its law. If the information is not necessary, the hearing officer should so advise the party. If it is determined that the material or witness is necessary, the liable State hearing officer should explore the possibility of obtaining the needed testimony (which may be by telephone) or material voluntarily. If this approach is not successful, the hearing officer must make arrangements with the appropriate official in the State where the witness or material is located to compel, through issuance of a subpoena or other

means, the witness to testify or for the evidence to be produced. Methods of obtaining the testimony or evidence will need to be tailored to the circumstances of the specific case.

Agent States should already have authority for issuing a subpoena for a liable State under the provisions of State law or regulation implementing section 9(a) of the proposed regulation contained in the Interstate Benefit Payment Plan. This regulation requires the agent State to "afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state."

5. *Action.* State agency administrators are requested to review existing State law provisions and agency practices involving interstate appeals to ensure that Federal law requirements as set forth in this program letter are met concerning responsibilities as a liable, agent or other State. If necessary, prompt action should be taken to assure Federal requirements are met.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Classification: UI.

Correspondence symbol: TEURA.

Date: February 15, 1991.

Expiration date: March 31, 1992.

Directive: Unemployment Insurance Program Letter No. 12-91

To: All State Employment Security Agencies  
From: Donald J. Kulick, Administrator for  
Regional Management

Subject: The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508)—  
Provisions Affecting the Federal-State  
Unemployment Compensation Program

1. *Purpose.* To advise State agencies of the provisions of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, which affect the Federal-State Unemployment Compensation Program.

2. *References.* Sections 5021, 11333, 11403, and 11404 of P.L. 101-508.

3. *Background.* On November 5, 1990 the President signed into law the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), P.L. 101-508. OBRA 90 contains four provisions which affect the Federal-State unemployment compensation (UC) program. Following is a summary of the changes made.

*Section 5021* amends sections 903(a)(2) and 903(c)(2) of the Social Security Act (SSA). Section 903(a)(2), SSA, is amended to specify that future Reed Act distributions will be based on the Federal taxable wage base rather than the State taxable wage base, and to change the basis upon which determinations concerning such distributions are to be made by the Secretary of Labor. Section 903(c)(2)(D), SSA, is amended to delete the 35-year limitation on the obligation of Reed Act funds for administration. In practical effect, this means Reed Act funds may be appropriated and obligated for administrative purposes indefinitely. However, because this provision is not effective until October 1, 1991, all States will experience a period during which some Reed Act funds may not be obligated. In addition, a clarification concerning the time when a charge against Reed Act funds must be made was added, as was a requirement that States

account for Reed Act money in accordance with standards established by the Secretary of Labor.

*Section 11333* amends section 3301 of the Federal Unemployment Tax Act (FUTA) to extend the 0.2 percent temporary tax under FUTA through December 31, 1995. The gross FUTA tax remains at 6.2 percent, the maximum offset at 5.4 percent, and the net tax at 0.8 percent. OBRA 90 did not extend section 901(g)(1) of the Social Security Act which governed the transfer from the Employment Security Administration Account (ESAA) of an amount equal to the 0.2 percent temporary tax for calendar years 1988, 1989, and 1990, with fifty (50) percent allocated to the Extended Unemployment Compensation Account (EUCA) and fifty (50) percent allocated to the Federal Unemployment Account (FUA). Therefore, for calendar years 1991 through 1995, there will be no special rule for transfers from the ESAA. Instead, 10 percent of the 0.8 percent net tax will be transferred to the EUCA pursuant to section 905(b)(1) of the Social Security Act.

*Sections 11403 and 11404* amend the Internal Revenue Code (IRC) to extend, with certain changes, until December 31, 1991, exclusions from an employee's gross income for amounts paid by an employer for certain educational assistance and amounts contributed by an employer to a qualified group legal services plan for an employee. Such amounts excluded from an employee's gross income are excluded from the definition of "wages" under sections 3306(b)(12) and 3306(b)(13), FUTA.

4. *Action Required.* SESAs are requested to notify appropriate staff of these provisions.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachments.*

I. Text, explanation and interpretation of changes affecting the Federal-State Unemployment Compensation program

II. Draft Language for State Laws

#### Attachment I to UIPL No. 12-91

Text, Explanation and Interpretation of Changes Affecting the Federal-State Unemployment Compensation Program Made by Public Law 101-508 (Sections 5021, 11333, 11403, and 11404)

I. Section 5021. Amendments to Sections 903(a)(2) and 903(c)(2), SSA  
A. Text of Amendment.

SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS.— Paragraph (2) of section 903(a) (42 U.S.C. 1103(a)(2)) is amended to read as follows:

"(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

"(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

"(B) shall bear the same ratio to the total amount to be so transferred as—

"(i) the amount of wages subject to tax under section 3301 of the Internal Revenue

Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

"(ii) the total amount of wages subject to such tax during such year."

(b) **USE OF TRANSFERRED AMOUNTS.**—Paragraph (2) of section 903(c) [42 U.S.C. 1103(c)(2)] is amended—

(1) by striking "and" at the end of subparagraph

(c), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

"(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

"(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

"(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

"(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

"(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

#### B. Discussion.

1. Section 903, SSA, provides for the transfer (or "distribution") of certain amounts commonly called Reed Act funds, to the States when the balances in certain accounts in the Unemployment Trust Fund reach the ceiling levels specified in Title IX, SSA. Section 903(a)(2), SSA, provides the formula for allocating Reed Act funds to the States. Prior to amendment this formula provided that each State's share of the Reed Act funds to be transferred was based on a ratio relating to State taxable wages as defined in that section. Section 5021 of the OBRA 90 amended section 903(a)(2), SSA, to provide that future Reed Act distributions will be based on Federal taxable wages instead of State taxable wages.

2. Prior to amendment, Section 903(c)(2)(A), SSA, required the Secretary of Labor to determine the amount to be transferred to the States "on the basis of reports furnished by the States to the Secretary of Labor before September 1." Because the determination of the amount to be transferred is no longer based on the State's taxable wage base, there is no need for States to furnish these reports. Accordingly, section 5021(a) of the OBRA 90 amended section 903(a)(2)(A) to delete reference to State reports.

3. Prior to the amendment to section 903(c)(2), SSA, Reed Act funds transferred to the States were available for obligation for specified administrative purposes only within a limited number of years (specified in section 903(c)(2)(D), SSA) from the date of the transfer. Depending on the State's 12-month

period for Reed Act purposes, this period has varied from slightly more than 34 years up to 35 years. As a result of this "35-year limitation," authority to obligate Reed Act funds transferred in 1956 has expired in some States and is due to expire in all States by June 30, 1991. Section 5021, OBRA 90, amended Section 903(c)(2)(D) to remove the 35-year limitation on the obligation of Reed Act funds, effective October 1, 1991.

Section 5021(c), OBRA 90, sets the effective date of the amendments in subsections (a) and (b) of Section 5021 as applying to fiscal years beginning after the date of enactment of OBRA 90. Consistent with the use of the term "fiscal year" elsewhere in Section 903, SSA, "fiscal year" means the Federal fiscal year beginning October 1. OBRA 90 was enacted on November 5, 1990, and the first Federal fiscal year beginning after this date begins on October 1, 1991. Therefore, the effective date for the amendments to sections 903(a) and 903(c) is October 1, 1991. As a result of this effective date, all States will experience a "gap" between the expiration of the 35-year period and October 1, 1991, during which Reed Act funds transferred in 1956 may not be obligated for any administrative purpose, and some States will also experience a similar "gap" with respect to obligation of Reed Act funds transferred in 1957.

States using 12-month periods beginning on October 1 (for purposes of accounting for Reed Act obligations) lost the authority to obligate Reed Act funds transferred in 1956 as of September 30, 1990. States using 12-month periods beginning on January 1 lost the authority to obligate such Reed Act funds as of December 31, 1990, and States using 12-month periods that begin on July 1 will lose such authority to use such funds on June 30, 1991. Similarly, any State using 12-month periods beginning of September 1, lost the authority to obligate Reed Act funds transferred in 1956 as of August 31, 1990, and will also lose the authority to obligate Reed Act funds transferred in 1957 as of August 31, 1991. The States' authority to obligate Reed Act funds transferred in 1956 and 1957 will be restored upon the amendments made by section 5021, OBRA 90, becoming effective on October 1, 1991.

Although the 35-year limitation will expire as of September 30, 1991, section 903(c)(2)(D)(i) will continue to limit the amount of Reed Act funds which may be obligated at any time. In effect, a State may not obligate an amount in excess of the amount that equals the difference between the total amount transferred to the State under section 903 and amounts previously used and charged against transferred amounts. Thus, in regard to calculating the amount available for obligation at any time, there is no substantive change from prior law. However, new Section 903(c)(2)(D)(ii) expresses a charging rule that is merely implicit in the last sentence of present section 903(c)(2). Thus, clause (ii) specifies that (in determining the amounts available for obligation) amounts used by a State for administration shall be chargeable against the transferred amounts "at the exact time the obligation was entered into." Therefore, at no time may a State enter into an

obligation of Reed Act funds in an amount which exceeds the amount of unused Reed Act funds then standing to the credit of the State in the Unemployment Trust Fund at the exact time any such obligation is entered into.

4. Section 5021, OBRA 90, added a new subparagraph (E) to section 903(c)(2), SSA, which requires that the use of Reed Act funds be accounted for in accordance with standards established by the Secretary of Labor. We will provide more information regarding the Secretary's accounting standards in the future. In the meantime, those accounting rules set forth in Section 3040 of Part IV of the Employment Security Manual shall continue to be followed.

#### C. Amendments to State Law and Reed Act Appropriations.

1. A State which desires to take advantage of the removal of the 35-year time limit made by section 5021 of OBRA 90 should amend the provision in its law authorizing the use of Reed Act money which may still be available. Otherwise, if the law retains the previous 35-year limitation, the law will conflict with any appropriation act which correctly refers to the new language included in OBRA 90 and will raise issues under Federal law. These amendments should be made effective no earlier than October 1, 1991.

2. In the past we have found that some States enacting Reed Act appropriation bills have not included all of the requirements contained in section 903(c)(2) of the Social Security Act. In doing so, these States have raised issues as to the consistency of such bills with those requirements. To help prevent such issues from arising in the future, we are including two draft appropriation bills in Attachment II which include all of the provisions necessary to satisfy the requirements of section 903(c)(2) of the Social Security Act for Reed Act appropriations authorizing the obligation of money on and after October 1, 1991. We strongly urge that States make use of these draft bills.

3. Reed Act appropriation acts which authorize obligation prior to October 1, 1991, must continue to contain the 35-year limitation. For these appropriations, States should use the recommended Reed Act appropriation language found in Attachment III to UIPL 4-83. States wishing to regain authority to obligate Reed Act funds immediately on October 1, 1991, without enacting a new appropriations act, should add a sentence to the section containing the 35-year limitation. This sentence should state that the 35-year limitation is not in force, effective October 1, 1991.

For example, a State wishes to appropriate and obligate \$300,000 of Reed Act funds, \$100,000 of which was transferred in 1956. This State has a fiscal year beginning July 1. Therefore, the authority to obligate 1956 Reed Act money expires June 30, 1991. The State may appropriate the entire \$300,000, but, due to the 35-year limitation, the State may not obligate the \$100,000 transferred in 1956 after June 30, 1991. However, if the appropriation law limits the applicability of the 35-year requirement to the period ending September 30, 1991, the \$100,000 in 1956 Reed Act money

previously appropriated will again become available for obligation on October 1, 1991.

D. *Effective Date.* Under section 5021(c) of OBRA 90, the amendments made by section 5021 apply to fiscal years beginning after the date of enactment. In other words, as discussed above in Section B.2., these amendments will be effective October 1, 1991. Until then, the present law, including the 35-year limitation on obligation, will remain in effect.

## II. Section 11333. Amendments to Section 3301, FUTA.

### A. Text of Amendment.

#### SEC. 11333. EXTENSION OF FUTA SURTAX

(a) IN GENERAL.—Section 3301 (relating to rate of FUTA tax) is amended—

(1) by striking "1988, 1989, and 1990" in paragraph (1) and inserting "1988 through 1995", and

(2) by striking "1991" in paragraph (2) and inserting "1996".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 1990.

B. *Discussion.* Section 3301, FUTA was amended by section 11333(a) of OBRA 90 to extend the 0.2 percent temporary tax through December 31, 1995. However, in extending the 0.2 percent temporary tax, Congress did not extend section 901(g), SSA, which established special rules for calendar years 1988, 1989, and 1990, for the distribution of the amount equal to the amount raised by the 0.2 percent temporary tax.

OBRA 90 did not extend section 901(g)(1) of the Social Security Act which governed the transfer from the Employment Security Administration Account (ESAA) of an amount equal to the 0.2 percent temporary tax for calendar years 1988, 1989, and 1990, with fifty (50) percent allocated to the Extended Unemployment Compensation Account (EUCA) and fifty (50) percent allocated to the Federal Unemployment Account (FUA). As a result of the expiration of Section 901(g), SSA, there will be no special distribution of the amount equal to the revenue generated by the 0.2 percent temporary tax on wages paid after December 31, 1990. As to wages paid after December 31, 1990, therefore, distributions of the amounts appropriated to the ESAA under section 901(b)(1), SSA, will be as provided in Title IX, SSA, without consideration of the special rules in section 901(g). Of the amount equal to the net tax of 0.8 percent, which is appropriated under section 901(b)(1) and transferred to the ESAA under section 901(b)(2) (less repayments under section 901(b)(3)), ten (10) percent of such amount is transferred from time to time from the ESAA to the EUCA in accordance with section 905(b)(1), SSA. There is no other distribution of the amount of the net 0.8 percent which is appropriated and transferred to the ESAA.

C. *Effective Date.* The amendments made by section 11333(a) shall apply to wages paid after December 31, 1990.

D. *Implementation.* The Internal Revenue Service is responsible for collecting the temporary tax.

III. Section 11403. Amendments to Section 127 of the Internal Revenue Code of 1986 and Section 7101 of the Revenue Reconciliation Act of 1989 (P.L. 101-239).

### A. Text of Amendment.

#### SEC. 11403. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) REPEAL OF LIMITATION ON GRADUATE LEVEL ASSISTANCE.—Section 127(c)(1) is amended by striking the last sentence.

(c) CONFORMING AMENDMENT.—Subsection (a) of section 7101 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1990.

B. *Discussion.* Section 3306(b)(13), FUTA, excludes from the definition of wages "any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 \* \* \*" of the IRC. Prior to the amendments made by section 11403 of OBRA 90, Section 127, IRC, which excludes from gross income of the employee certain amounts paid, or expenses incurred, by the employer for educational assistance to the employee, did not apply to taxable years beginning after September 30, 1990.

Section 11403(a) of OBRA 90 amended section 127, IRC, to extend the exclusion from income of employer-provided educational assistance benefits through taxable years beginning before January 1, 1992 (effective for taxable years beginning after December 31, 1989). In addition, Section 11403(b) struck the last sentence of Section 127(c)(1), IRC, repealing the exclusion of graduate level assistance from the definition of educational assistance. Finally, section 11403(c) repealed section 7101(a)(2) of the Revenue Reconciliation Act of 1989 (Title VII of the Omnibus Budget Reconciliation Act of 1989), which provided that, for taxable years beginning in 1990, only those amounts paid prior to October 1, 1990 by the employer for educational assistance to the employee were to be taken into account in determining the amount excludable from the employee's income under section 127.

C. *Effective Dates.* The amendments made by subsections (a) and (c) of section 11403, OBRA 90, apply to taxable years beginning after December 31, 1989. The amendment made by subsection (b) of section 11403, repealing the provision on graduate level assistance, applies to taxable years beginning after December 31, 1990.

D. *Implementation.* Because the Internal Revenue Service has primary authority for interpreting IRC tax provisions, it will be responsible for interpreting and applying these amendments.

IV. Section 11404. Amendment to Section 120 of the Internal Revenue Code of 1986 and

#### Section 7102 of the Revenue Reconciliation Act of 1989 (P.L. 100-239).

### A. Text of Amendment.

#### SEC. 11404. GROUP LEGAL SERVICES PLANS:

(a) IN GENERAL.—Subsection (e) of section 120 (relating to amounts received under qualified group legal services plans) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7102 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

B. *Discussion.* Section 3306(b)(12), FUTA, excludes from the definition of wages "any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120, IRC, (relating to amounts received under qualified group legal services plans)." Prior to amendment, section 120, which excludes from an employee's gross income amounts contributed by an employer to a qualified group legal services plan for an employee or amounts reimbursed to an employee for legal services under such plan, did not apply to taxable years ending after September 30, 1990.

Section 1140(a) of OBRA 90 amended section 120, IRC, to extend the exclusion for employer-provided group legal services through taxable years beginning before January 1, 1992. In addition, section 11404(b) repealed Section 7102(a)(2) of OBRA 89 which provided that, for taxable years beginning in 1990, the exclusion is limited to "amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan" for periods before October 1, 1990.

C. *Effective Date.* The amendments made by section 11404, OBRA 90, apply to taxable years beginning after December 31, 1989.

D. *Implementation.* Because the Internal Revenue Service has primary authority for interpreting IRC tax provisions, it will be responsible for interpreting and applying this amendment.

## Attachment II to UIPL No. 12-91

### Draft Language for State Laws

#### I. Draft Statutory Language.

States will need to amend their unemployment insurance laws if they currently address Reed Act appropriations. The following language will allow States to use either of the Reed Act appropriation alternatives provided below and should be effective no earlier than October 1, 1991. (This language is intended to replace Section 10(f) of the Draft Language provided with UIPLs 745 and 987.)

(f) *Money credited under Section 903 of the Social Security Act.*—

(1) Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Section 903 of the

Social Security Act may not be requisitioned from this State's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this Act. Such money may be requisitioned pursuant to Section [insert section referring to withdrawals from the Unemployment Trust Fund] for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this Act but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which specifies the purpose(s) for which such money is appropriated and the amount(s) appropriated therefor. Such appropriation is subject to the following conditions:

(A) The period within which such money may be obligated is limited to a period ending not more than two years after the date of the enactment of the appropriation law; and

(B) The amount which may be obligated is limited to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds, (ii) the aggregate of the amounts used by this State pursuant to this Act and charged against the amounts transferred to the account of this State.

(2) For purposes of subsection (B), amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(3) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be expended, shall be returned promptly to the account of this State in the Unemployment Trust Fund.

#### II. Draft Appropriation Language.

Two suggested Reed Act appropriation bills are presented. Either bill may be used with the draft statutory language presented earlier. The first permits States with statutory Reed Act provisions to incorporate the requirements of section 903(c)(2) by simply referencing these statutory provisions. This approach may be better for States where the Reed Act appropriation may be contained in a larger appropriation act or where State appropriation law limits the content of any single appropriation bill. The second details the requirements of section 903(c)(2) and is similar to Reed Act appropriations recommended by this Department in the past.

#### Alternative 1.

**APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY** (Name of State employment security agency)

SEC. 1 There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of \$\_\_\_\_\_, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction] and subject to the requirements of Section [reference section of State code containing Reed Act provisions] of the State Code, for the purpose of acquiring land at [location] and erecting a building thereon for the use of [name of State employment security agency] and for such improvements, facilities, paving, landscaping, and fixed equipment<sup>1</sup> as may be required for its proper use and for operation by the [name of State employment security agency].

SEC. 2 Section 1 shall take effect and be in force from and after passage.

#### Alternative 2.

**AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY** (Name of State employment security agency)

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF** (Name of State)

SEC. 1 There is hereby appropriated out of funds made available to this State under section 903 of the Social Security Act, as amended, the sum of \$\_\_\_\_\_, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction], for the purpose of acquiring land at [location] and erecting a building thereon for the use of [name of State employment security agency] and for such improvements, facilities, paving, landscaping, and fixed equipment<sup>1</sup> as may be required for its proper use and for operation by the [name of State employment security agency].

SEC. 2 No part of the money hereby appropriated may be obligated after the expiration of the 2-year period beginning on the date of enactment<sup>2</sup> of this act.

SEC. 3 The amount obligated<sup>3</sup> pursuant to this act shall not exceed at any time the amount by which (a) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this State.

SEC. 4 This Act shall take effect and be in force from and after passage.

<sup>1</sup> "Fixed equipment" refers to such things as central heating and/or air conditioning plant which becomes an integral part of the building and may be included in the cost of the building reimbursable out of granted funds. Personality, such as furniture and other furnishings, should be specifically and separately authorized. Though costs of personality may, of course, be met from Reed Act money, such costs are not reimbursable from granted funds.

<sup>2</sup> The Department of Labor recommends that the phrase "date of enactment" be used here, since section 903(c)(2)(B) of the Social Security Act requires that use of the appropriated money be limited to a 2-year period beginning with such date.

<sup>3</sup> Section 903(c)(2)(D) requires that this limitation be applied to money obligated, even though a State may choose to apply the 2-year limitation to expenditures.

Classification: UI/FUTA  
Correspondence Symbol: TEURL  
Date: March 6, 1991.

Directive: Unemployment Insurance Program  
Letter no. 14-91

To: All State Employment Security Agencies  
From: Donald J. Kulick, Administrator for  
Regional Management

Subject: Amendment to section  
3304(a)(14)(A), FUTA, Made by Section  
162(e)(4) of P.L. 101-649, the Immigration  
Act of 1990

1. *Purpose.* To inform States of the amendment made to section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA) by section 162(e)(4) of P.L. 101-649.

*References.* Section 3304(a)(14)(A), FUTA; UIPL 1-88, dated October 28, 1985; UIPL 1-86, Change 1, dated February 16, 1989; sections 162(e)(14) and 161(a) of P.L. 101-649; Sections 201(b), 203(c)(3), and 203(h) of P.L. 96-212; and Sections 207 and 208 of the Immigration and Nationality Act.

3. *Background.* P.L. 101-649, the Immigration Act of 1990, was enacted into law on November 29, 1990. Section 162(e)(4) of P.L. 101-649 amends section 3304(a)(14)(A), FUTA, effective October 1, 1991.

Section 3304(a)(14)(A), FUTA, requires, as a condition for the Secretary of Labor's certification of a state to the Secretary of the Treasury, that the State law provide that: compensation shall not be payable on the basis of services performed by all alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

Section 162(e)(4) of P.L. 101-649 amended section 3304(a)(14)(A), FUTA, by striking "section 203(a)(7) or". This amendment takes effect on October 1, 1991 as provided in section 161(a) of P.L. 101-649.

4. *Discussion.* Prior to the amendment made by section 162(e)(4) of P.L. 101-649 becoming effective, section 3304(a)(14)(A), FUTA provides that the category of aliens "permanently residing in the United States under color of law" (PRUCOL) includes aliens lawfully present in the United States as a result of the application of section 203(a)(7) of the Immigration and Nationality Act (INA). Section 203(a)(7), INA, which related to conditional entrants, was repealed by section 203(c)(3) of the Refugee Act of 1980 [P.L. 96-212 and replaced under section 201(b) of the Refugee Act by the addition of sections 207 and 208 to the INA. Under section 203(h) of the Refugee Act, section 203(a)(7), INA, is applicable prior to April 1, 1980. In addition, Section 203(h) of the Refugee Act provides that, effective April 1, 1980, any reference in Federal law to section 203(a)(7), INA, is considered a reference to Sections 207 and 208, INA. Section 207 relates to refugees and Section 208 to asylees, both of which are.

therefore, considered to be in PRUCOL status under section 3304(a)(14)(A), FUTA. See Unemployment Insurance Program Letters (UIPL) 1-86 and 1-86, Change 1.

Section 162(e)(4) of P.L. 101-649 amended section 3304(a)(14)(A), FUTA, to delete the reference to obsolete section 203(a)(7), INA. The amendment does not make any reference to refugee and asylees. Since PRUCOL status is no longer automatic for refugees and asylees, the Department of Labor's interpretation of the two-part test of section 3304(a)(14)(A) for determining PRUCOL status must be satisfied. Aliens granted refugee and asylee status will continue to be considered in PRUCOL status for the purpose of determination of eligibility for unemployment compensation because aliens in this status satisfy the Department's two-part test.

Under the two-part test, the alien must first be residing under "color of law." As stated in UIPL 1-86, Change 1, for an alien to be residing "under color of law," the Immigration and Naturalization Service (INS) must know of the alien's presence and must provide the alien with written assurance that enforcement of deportation is not planned. Second, to be "permanently residing", the INS must give the alien permission to remain in the U.S. for an indefinite period of time.

Specifically, in the case of refugees and asylees, the INS has affirmatively acted to grant status under the relevant provisions of the INA. The granting of such status in either case gives "color of law" to the alien's presence in the United States for an indefinite period of time. Therefore both groups of aliens are residing under "color of law" and are also "permanently residing" because they retain such status until revoked by the INS.

5. *Action required.* It is recommended that States delete any reference in State law to obsolete section 203(a)(7), INA. If Congress adds a new provision designated as section 203(a)(7) to the INA and aliens admitted under section are subsequently deemed by the Department of Labor not to have PRUCOL status, States will be required to delete reference to section 203(a)(7) from State law to assure consistency of State law with section 3304(a)(14)(A), FUTA. Please inform appropriate staff of the change in section 3304(a)(14)(A), FUTA, made by P.L. 101-649.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 91-15491 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL COMMISSION ON MIGRANT EDUCATION

### National Commission on Migrant Education; Meeting

**ACTION:** Notice of meeting.

**SUMMARY:** The National Commission on Migrant Education will hold its tenth meeting on July 16, 1991, for the purpose of holding a hearing. The Commission

was established by Public Law 100-297, April 28, 1988.

*Date, Time, and Place:* Tuesday, July 16, 1991, 2 to 5:15 p.m. and 6:30 to 8:30 p.m., Starlight School, 225 Hammer Drive, Watsonville California 95046.

*Status:* Open—public hearing.

#### Agenda

- 2 to 5:15 p.m.: Scheduled testimony from recruiters, educators, health coordinators, and other concerned members of the migrant community.
- 6:30 to 7:35 p.m.: Scheduled testimony from parent involvement groups, parents, and students.
- 7:35 to 8:30 p.m.: Open for testimony from the public.

All testimony will be relevant to migrant education.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth J. Skiles (301) 492-5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

*Chairman.*

[FR Doc. 91-15425 Filed 6-27-91; 8:45 am]

BILLING CODE 8820-DE-M

## NATIONAL SCIENCE FOUNDATION

### Materials Research Special Emphasis Panel; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Materials Research.

*Date:* July 17, 1991.

*Location:* Princeton University, Princeton, New Jersey.

*Time:* 9 a.m.—5:30 p.m.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone: (202) 357-9794.

*Purpose of Meeting:* To provide advice and recommendations concerning the support for the proposal, "An Ultra-Long (Quasistatic) 65 Telsa Pulsed Magnet".

*Reason for Closing:* The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Gail A. McHenry,

*Acting Committee Management Officer.*

[FR Doc. 91-15367 Filed 6-27-91; 8:45 am]

BILLING CODE 7555-01-M

## Mechanical and Structural Systems Special Emphasis Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Mechanical and Structural Systems.

*Date:* July 17-18, 1991.

*Location:* 1800 G Street, NW., Washington, DC.

*Time:* July 17th, 9 a.m.—5 p.m., July 18th, 1 p.m.—5 p.m.

*Type of Meeting:* Closed.

*Contact Person:* Dr. John B. Scalzi, Program Director, Structures and Building Systems Program, Room 1108, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9542.

*Purpose of Meeting:* To review unsolicited proposals for consideration of support.

*Reason for Closing:* The proposals being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Gail A. McHenry,

*Acting Committee Management Officer.*

[FR Doc. 91-15368 Filed 6-27-91; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3070]

### Louisiana Energy Services, L.P., Claiborne Enrichment Center; Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

#### 1. Description of Proposed Activity

Louisiana Energy Services, L.P. (LES) has submitted an application, dated January 31, 1991, for a license to receive, possess, use, deliver, and transfer byproduct, source, and special nuclear material for its Claiborne Enrichment Center. The facility would be constructed near Homer, Louisiana, in Claiborne Parish, and would be used to enrich natural uranium hexafluoride to a maximum of 5 percent U-235 by the gas centrifuge process. A notice of receipt of application, availability of applicant's environmental report and other documents, consideration of issuance of license, hearing, and Commission order was published in the Federal Register on May 21, 1991 (56 FR 23310).

## 2. Environmental Report

EIS has submitted an Environmental Report in accordance with the requirements specified in 10 CFR part 51 and pursuant to the National Environmental Policy Act of 1969. The Environmental Report, which discusses environmental considerations related to the construction and operation of the Claiborne Enrichment Center, is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC, and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, Louisiana 71040.

## 3. Environmental Impact Statement

Public Law 101-575 requires that the NRC prepare an Environmental Impact Statement (EIS) in connection with the licensing of a uranium enrichment plant, and that the EIS be prepared before the hearing on the application for a license is completed. Accordingly, the NRC will prepare an EIS on the construction and operation of the Claiborne Enrichment Center.

The NRC will first conduct a scoping process for the EIS, and as soon as practicable thereafter, prepare a draft EIS for agency and public comment. The draft EIS will be the subject of a separate notice in the *Federal Register*. After receipt and consideration of comments, the NRC will prepare a final EIS.

## 4. Scoping Process

The scoping process for the EIS will be used to: a. Define the scope of the proposed action which is to be the subject of the EIS.

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study issues that are peripheral or are not significant.

d. Identify any environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the EIS under consideration.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies, and as appropriate, allocate assignments for preparation and

schedules for completion of the EIS to the NRC and any cooperating agencies.

h. Describe the means by which the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following persons to participate in the scoping process: a. The applicant, Louisiana Energy Services, L.P.

b. Any person who has petitioned for leave to intervene or who has been admitted as a party in the proceeding on the license application.

c. Any other Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards.

d. Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards.

e. Any affected Indian tribe.

f. Any person who requests or has requested an opportunity to participate in the scoping process.

Participants may submit written comments on the scoping process for the EIS to Mr. Charles J. Haughney, Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Submittals of comments should be postmarked by August 14, 1991, to be considered in the scoping process.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715, and in the aforementioned *Federal Register* notice (56 FR 23310).

## 5. Public Scoping Meeting

In the preparation of an EIS and in accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has determined to hold a public scoping meeting as part of the scoping process for the Claiborne Enrichment Center EIS. This public scoping meeting will be held at the Homer High School cafeteria in Homer, Louisiana, on Tuesday, July 30, 1991, at 7 p.m. The meeting will include a briefing by Louisiana Energy Services on the proposed Claiborne Enrichment Center, a briefing by the NRC on the environmental review process and the proposed scope of the EIS, and the

opportunity for interested agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or proposed scope of the EIS. Persons may register to present oral comments by writing to Mr. Charles J. Haughney at the aforementioned address, or they may register at the meeting. Individual oral comments may be limited in time, depending on the number of persons who register. Comments presented at the meeting will be considered in the scoping process for the EIS.

## 6. Summary

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process.

Additional information about the proposed activity, the EIS, and the scoping process may be obtained from Dr. Edward Y.S. Shum, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by telephone at (301) 492-0607.

Dated at Rockville, Maryland, this 21st day of June 1991.

For the Nuclear Regulatory Commission.

**John T. Greeves,**

*Deputy Director Division of Industrial and Medical Nuclear Safety Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 91-15466 Filed 6-27-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

## Consumers Power Co. (Palisades Plant); Exemption

### I

The Consumers Power Company, (the licensee) is the holder of Facility Operating License No. DPR-320, which authorizes operation of the Palisades Plant at a steady-state power level not in excess of 2530 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Covert Township, Van Buren County, Michigan. The licensee provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

### II

On November 18, 1980, the Commission published a revised Section 10 CFR 50.48 and a new appendix R to

10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.46 and appendix R became effective on February 17, 1981. Section III of appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this exemption request. Specifically, subsection III.G.2.c and d provides that, " \* \* \* where cables or equipment, including associated non-safety circuits that could prevent operation or cause maloperation due to hot shorts, open circuits, or shorts to ground, of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area \* \* \* inside noninerted containments \* \* \*, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

d. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards."

### III

Consumers Power Company's (CPCo) letter dated October 4, 1985, requested an exemption from the separation criteria of 10 CFR part 50, appendix R, section III.G.2.d, for the pressure and level transmitters in the Containment Air Room. Following staff review and deliberations with CPCo, the licensee submitted a January 11, 1989, letter proposing appendix R compliance for the Containment Air Room using post-fire safe shutdown methodology similar to that methodology which could be used after a Main Steam Line Break (MSLB) inside containment. If used as an appendix R compliance strategy, this methodology would have required exemptions from two other appendix R criteria (III.G.3 and III.L.2).

After further review, the staff determined that neither the October 4, 1985, nor the January 11, 1989, exemption request contained enough substantiation to allow an exemption. CPCo then decided to install fixed suppression to bring the area into compliance with section III.G.2, committing to install the suppression system during the 1990 Refueling Outage. During the engineering and design phase of the project, questions arose concerning the potential for the suppression system actuating during several postulated transients, resulting in the potential for large volumes of water being sprayed into the

containment air room and draining to the containment sump. Intricate shutoff controls of the fire water system were evaluated, resulting in significantly higher project costs than previously estimated. Following extensive discussions between the licensee and the staff, it was decided that if CPCo further analyzed the effect of a fire using state-of-the-art methods and could conclude that a credible worst-case fire would not prevent post-fire safe shutdown, the staff would reevaluate CPCo's October 4, 1985, exemption request.

CPCo reanalyzed the effect of a Containment Air Room using methodology approved by the National Institute of Standards and Technology. This reanalysis was submitted to the staff by CPCo letter dated August 8, 1990, in support of the original request that the Containment Air Room redundant instrumentation be exempted from the minimum 20-Foot separation criteria of 10 CFR part 50, appendix R, section III.G.2. This request was made under the provisions of 10 CFR 50.12(a)(2)(ii) in that application of the requirements of appendix R, section III.G.2.d, is not necessary to achieve the underlying purpose of the rule when considering the particular design and circumstances of the Containment Air Room.

### IV

The purpose of section III.G.2 to appendix R is to ensure that redundant components of a safety system, required to achieve and maintain post-fire hot shutdown, are protected in such a way that at least one such component will remain free of damage which could prevent the completion of the safety function. One such means of protecting these redundant safety components is provided for in section III.G.2.d, that is, separate the components by at least 20 feet without intervening combustibles or fire hazards. The following discussion summarizes Consumers Power Company's basis for an exemption from the requirements of section III.G.2d for the Containment Air Room.

#### *Containment Air Room*

The Containment Air room is an oddly shaped room on the lowest level of containment (590' elevation). The room has a 13½ foot high ceiling, extending up to 34 feet in the vicinity of the metal staircase in the northeast corner of the room. Total room volume is approximately 14,420 cubic feet. The walls, floor, and ceiling are constructed of poured reinforced concrete. There are two unrated, but substantial, steel doors in the room that lead to other areas of

containment. The room is well ventilated by natural circulation supplemented by forced circulation. Fire protection equipment maintained operable in the room includes three smoke detectors which have automatic control room alarm functions, a fire hose at the top of the stairs, adjacent to the personnel air lock, and two fire extinguishers.

The room is essentially the containment electrical penetration room, which contains process monitoring instrumentation for the pressurizer and steam generators. The instruments of concern are located on the east wall opposite the 480V pressurizer heater load centers and are listed below:

#### *Equipment Under Consideration*

Steam Generator A Pressure (PT-0751 A, B, C, and D); Steam Generator "B" Pressure (PT-0752 A, B, C, and D). Steam Generator A Level (LT-0751 A, B, C, and D; LT-0757 A and B; LT-701; LT-702) Steam Generator B Level (LT-0752 A, B, C, and D; LT-0758 A and B; LT-703; LT-704) Pressurizer Level (LT-0101 A, B; LT-0102; LT-0103) Pressurizer Pressure (PT-0101 A, B; PT-0102 A, B, C, and D, PT-0104A and B; PT-0105 A and B).

The licensee's original exemption request, dated October 4, 1985, listed five additional instruments that were not discussed in the licensee's most recent evaluation of the effects of a worst case fire in the Containment Air Room. The staff discussed this discrepancy with the licensee. Pressurizer level instruments LT-0102 A, B, C, and D were removed by modification in 1987, leaving two sets of redundant indication; LT-0101 A and B, and LT-0102 and 0103. Also, according to the licensee, pressurizer level instrument LT-0105 should not have been referenced in the original submittal since it is a non-environmental qualified instrument used primarily for mid-loop indication and not necessary for safe shutdown.

#### *Assumptions*

Consumers Power Company fire protection engineers based their reanalysis of a Containment Air Room Fire on the following assumptions:

1. A cable tray fire is the only type of fire that needs to be considered for the following reasons:

Access to this area is severely limited during operations. Personnel entering containment dress and undress outside of containment. There are no step-off pads and no discarded anti-contamination clothing inside of containment during operation.

Everything is stored or discarded outside of containment when the plant is operating.

Strict administrative controls dictate that all loose material be removed from containment prior to start-up to prevent containment sump plugging and transient fires.

Since controls are in place to remove the risk of transient fires during operation and the only major fixed combustible is cable, a cable tray fire is the only fire that needs to be considered.

2. Fires that occur during plant operations are considered worst case since that is the time the instruments would be needed to safely shut down.

3. A worst-case fire involves the cables in one channel of cable trays only. By the use of cable tray fire stops and other protective features and controls, it can be assumed that one train of instrumentation circuits will be free of fire damage for anticipated fires inside containment. This position is documented in an appendix R exemption request dated July 23, 1985.

4. Narrow range (0-100%) steam generator level indication is sufficient for safe shutdown. This is acceptable because a loss-of-coolant accident (LOCA) or main steam line break (MSLB) is not considered to be occurring at the same time as a fire.

5. Level indication in one steam generator is sufficient for safe shutdown. (Again, because a LOCA or MSLB is not occurring simultaneously.)

The validity of these assumptions is discussed in section V.

#### *Likelihood and Type of a Potential Fire*

The licensee's fire protection engineers researched self-initiated cable tray fires and found that for #12 AWG cables currents of from 120 to 130 amperes were required to induce open flaming. In full-scale testing, the intense period of fire activity persisted for between 40 and 240 seconds after which rapid reduction to self-extinguishment of the fire was observed. In no case involving electrically initiated fire in rated low flame spread cables was propagation of the fire beyond the tray of fire origin observed.

In other tests conducted, locked rotor amperes (LRA) were applied to test cables to judge their impact on target cables. One of the design criteria for the test program was that the worst-case electrically induced fault would be on a motor feeder circuit, because the majority of large loads, and the more potentially damaging ones, are motor loads. The most credible worst-case fault would be the sustained application of LRA to the test cables. This type of fault was selected because it is a typical

condition, it can be postulated as having an extended duration, and its magnitude is large enough to cause damage to the fault cable and adjacent cables. To select the test cable, typical plant cable feeder sizes were tabulated along with the corresponding maximum LRA for each feeder and the corresponding motor pigtail conductor size. Based on preliminary screening test data, a relationship was developed between LRA duration and fusing (open circuit) of the motor pigtail conductors. Using this relationship in conjunction with data obtained from the screening tests, the worst-case fault cable was selected and was used in the subsequent configuration tests. The selected worst-case cable was the cable with the highest temperature at the time its corresponding motor pigtails fused (open circuited).

The tests demonstrated that when ignition occurred, the fire never propagated to an adjacent target cable even when both were touching. The fires that occurred were self-extinguishing when the electrical fault was interrupted. The amount of smoke created by the overload was extremely dense and would be readily detected by the plant fire detection system.

Although, the most likely type of fire would be a small self-extinguishing fire that would generate a lot of smoke, CPCo personnel assumed a much worse fire for the purpose of analysis (one which would be most likely initiated by an external source). Using accepted heat release equations, the fire of analysis burns for fifteen minutes and generates 2674.1 KW of heat.

This fire of analysis represents over 68 feet of 12-inch wide cable tray with 50% fill. The assumed total volume of combustibles for this fire of analysis exceeds the volume of either right or left channel trays in the Containment Air Room. This is considered a worst-case fire. A slower burning fire is more likely, however, a slower fire would not produce as high a temperature as a faster fire.

The worst-case fire data was then used in a fire modeling program called Hazard I developed by the National Institute of Standards and Technology. Two models were run; the first placing the fire in the center of the Containment Air Room, the second, against a wall near the stairway at a height of 9.8 feet. The Hazard I model separates the air in the rooms into upper and lower thermal layers. In the main part of the room, equipment below elevation 601'4" will be in the cooler part of the room. In the stairway, equipment below elevation 607' will be in the cooler part of the room.

The majority of instruments in the Containment Air Room are environmentally qualified (EQ) and will be exposed to the lower thermal layers in the event of a fire in the room. (The four instruments not environmentally qualified will be discussed in section V.) Temperatures seen in the lower layers of a fire in the room and stairway (126 °F) are significantly lower than the temperature the EQ instruments are qualified for (408 °F). Therefore, the licensee maintains that the instruments will operate satisfactory in the event of a worst-case fire in the room.

Finally, after assuming the type and location of a worst-case fire in the Containment Air Room, the licensee assessed the impact this fire would have on instruments the operators would need to safely shut down the plant. Two instrument matrices were developed. The first lists right and left channel instruments, showing the distance between the redundant instrumentation. The second matrix shows instrument elevation relative to the hot thermal layer of gases that will be experienced in a worst-case fire. The licensee reviewed the effects of a fire initiating in either the right or left channel cable trays, and the resulting impact on redundant instrumentation in the room, and concluded that sufficient instrumentation is available to the operators to safely shut down the plant. The licensee's discussion of various fire scenarios has been incorporated in the staff's evaluation in the following section.

#### **V**

The staff has reviewed the information supplied by the licensee and has had numerous discussions with Consumers Power Company concerning the design and circumstances of the Containment Air Room. Additionally, staff personnel have toured the Containment Air Room on several occasions, noting instrument and cable tray locations and independently assessing the combustible loading in the room.

The staff agrees with the licensee's determination that a cable tray fire is the most probable fire considering the design of the room and the strict administrative controls preventing the local storage of loose combustibles. Written guidance in three procedures call for the removal of transient combustibles from safety-related areas such as the Containment Air Room. An Administrative Procedure on plant housekeeping requires a thorough containment inspection for unnecessary debris and material which could pose a

fire threat. Particular attention is drawn to the 590' level of containment (the Containment Air Room Level).

The staff also accepts the licensee's assumption that a worst-case fire involves one channel of cable trays during plant operation. A previous Appendix R exemption (dated July 23, 1985) recognizes the use of cable tray fire stops and other protective features, thereby assuming that one train of instrumentation circuits will be free of fire damage for anticipated fires in containment. Instrumentation in the Containment Air Room is necessary to safely shut down the plant. Therefore, a fire during plant operation is considered to be the worst case, even though transient combustible material control is much tighter during plant operation than in an outage situation where room access and maintenance (and, therefore, combustible material) would be more prevalent.

The likelihood of a fire in the Containment Air Room during operation is remote. External sources of ignition are unlikely due to:

1. The administrative controls covering combustible material in safety-related spaces, and
2. The controls over access to containment during operation (e.g., access is limited, material is discarded outside containment, and flammable liquids are not brought into containment).

Therefore, the staff concurs with the licensee that the most probable fire would be a self-initiated cable tray fire.

Consumers Power Company analyzed a cable tray fire that lasted for fifteen minutes and which consumed 11.4 cubic feet of cable. There are two cable trays present in the room. The right tray contains the larger total volume of cable at 7.62 cubic feet. The licensee, therefore, conservatively input a larger combustible loading into the fire model (approximately 150 percent of the combustible material present in the larger tray). Also, although a slower burning fire is considered more likely due to the nature of self-initiated cable tray fire scenarios, the licensee was conservative in assuming a relatively fast burning fire for the fire of analysis. A slower fire would not produce as high upper and lower room air temperatures as this model provided and, therefore, would not have as significant an impact on room instrumentation. This relatively fast burning fire is, therefore, considered the worst-case fire for the room.

The Hazard I model does not provide a totally realistic assessment of air temperatures in a room during a fire. The model basically separates the room into upper layer temperatures (Hot

Gases) and lower layer temperatures (Cooler Gases). However, the model, (which is approved by the National Institute of Standards and Technology) is a useful tool in determining operability of instruments remaining in the "cool gas" region.

The lower layer height (cool gas region) starts at approximately the 601.5' elevation in the Containment Air Room and the 607' elevation in the adjoining stairway. These elevations correspond to approximately two feet below the ceiling elevation in the main room and seventeen feet below ceiling level in the stairway region. Lower layer air temperatures in both regions are calculated to be below 56 °C (132.8 °F) for the duration of the fire (as compared to upper layer air temperatures in the 400 °C range (approximately 750 °F)).

The licensee chose a location for the fire of analysis to be at a height of 9.8 feet in the center of the room. Staff review of drawings supplied by the licensee show the lower cable tray at a height of approximately 8.4 feet, or 1.4 feet below the assumed fire location. The licensee was questioned concerning this apparent non-conservative selection of fire location. Consumers Power Company responded that a fire location roughly corresponding to the actual cable tray locations was chosen. A value of 3 meters (9.8 feet) was selected simply because it was a round number. The Hazard I model was re-run using the more conservative fire height corresponding to the lower instrument tray. The reanalysis had minor effects on the thermal layer heights and temperatures. The upper layer region was expanded by five inches. This lowering of the Hot Gas region did not envelope additional instrumentation; the majority of instruments are still located approximately two feet below the upper layer Hot Gas region. Room air temperatures experienced a trade-off as fire locations was lowered. Upper air temperature decreased approximately 50 °F and lower air temperature increased 11 °F. This reanalysis, and its effect on fire parameters, is acceptable.

The safety-related instruments in the Containment Air Room were reviewed to verify adequate instrumentation would be available to safely shut down the plant. Not only was instrument elevation reviewed relative to the Hot Gas region, but also process tubing and cabling elevations. All but four of the thirty-eight instruments located in the room are EQ, which means they have been tested to operate properly in temperatures up to 408 °F. The temperatures calculated for the lower air layer are significantly lower than such accident scenario temperatures;

therefore, it is appropriate to assume instrument operability for lower air layer instruments.

The licensee states that the four instruments which are not EQ are qualified for temperatures up to 160 °F. This rating, although much lower than the EQ rated instrumentation, still provides adequate margin to the highest temperatures seen in the lower air layer. Additionally, all instruments have steel noncombustible cases surrounding them, which to a certain degree act as radiant energy shields. All wiring is run in conduit from cable trays. The cases and conduit assist in blocking the radiant energy from the fire to the instrument of concern.

The following discussion addresses the operator's ability to safely shut down the plant with available instrumentation in the case of either a right or left cable fire. Instruments that have conduit, process tubing, or the instruments themselves located in the "Hot Gas" region are, in general, not credited for operation.

#### *Steam Generator Pressure*

For a right channel cable tray fire, left channel steam generator pressure instruments are available for both steam generators (PT-0751C and PT-0752C).

For a left channel cable tray fire, PT-0751D and its cables are located in the hot layer. However, the corresponding instrument for Steam Generator B (PT-0752D) is not affected. Since steam generator pressure would be the same in both steam generators, PT-0752D can be used as sufficient indication for steam generator pressure.

#### *Steam Generator Level*

For a right channel cable tray fire, left channel steam generator level instruments are available for both steam generators (LT-0751C and LT-0752C). Wide range steam generator level is available using LT-0757A and LT-0758A.

For a left channel cable tray fire, the cables for LT-0751D are located in the hot layer. In addition, wide range steam generator level instruments LT-0757B and LT-0758B have cables that extend into the hot layer in the stairwell area.

Regarding the wide range steam generator level instruments, the licensee states that during normal shutdowns, steam generator levels do not usually go below the narrow range instrumentation. Therefore, shutdown can be accomplished without wide range steam generator level indication.

Regarding LT-0751D, the corresponding instrument for Steam Generator B, LT-0752D, located a

minimum of 15 feet from LT-0751D, is not affected by the fire. In addition, the operators have other indications as to the adequacy of the Steam Generator function; e.g., primary coolant temperatures, main steam flows, and feedwater flow.

#### *Pressurizer Pressure*

For a right channel cable tray fire, left channel wide range and narrow range pressurizer pressure instruments are available (PT-0104A and PT-0105A).

For a left channel cable tray fire, right channel wide range and narrow range pressurizer pressure instruments are available (PT-0104B and PT-0105B).

For a right channel cable tray fire, left channel pressurizer level instrument LT-0102 has instrument tubing that extends into the hot layer. There is a possibility that the water in the process tubing will flash to steam since the upper layer temperature is above the saturation temperature at this pressure. However, it is expected that the heat will be conducted away by the tubing during the short period of time the process tubing is exposed to the hot layer. This is based on several considerations:

1. Only a short section of the tubing (approximately 2 feet) is in the "Hot Gas" layer.
2. The section of tubing in the hot layer is mounted on the wall, thus its temperature will more closely approximate the wall temperature.
3. The tubing is only in the hot layer for approximately 1 minute.
4. The upper layer air temperature is only above saturation for a maximum of 200 seconds.

Even if some flashing would occur, it is expected that transmitter accuracy would recover after approximately one minute as the hot layer rises. In addition, LT-0101A is available to provide pressurizer level indication should LT-0102 fail.

For a left channel cable tray fire, right channel pressurizer level instrument LT-0103 has cables that extend into the hot layer. LT-0101B is available to provide pressurizer level indication should LT-0103 fail. This provides adequate information to safely shut down the plant.

A plant review and walkdown of the control room panels was conducted by the NRC staff to ensure that all instrumentation credited to be available for safely shutting down the plant is readily accessible by the operators. The results of this review were acceptable.

The licensee has shown that sufficient instrumentation is available to safely shut down. However, two issues were not addressed in the licensee's evaluation which have the potential to

complicate a shutdown. Both of these issues were discussed with the licensee. First, the impact of having certain instruments out-of-service for maintenance was not addressed. It is possible, especially in the case of pressurizer level, to have a backup instrument (that is being relied on for indication in the event of a worst-case fire), out-of-service for maintenance. In such an instance, the operator would have to rely on secondary indications (e.g., charging flow, core exit thermocouples) to assist in assessing proper plant parameters. The licensee responded that the combination of Technical Specification Limiting Conditions for Operation, coupled with a high priority for returning control room indications to service, will result in a negligible probability that necessary instrumentation will not be available if needed. The staff reviewed the Technical Specification limits on removing instrumentation from service. Also, a review of the work order history for pressurizer level instruments LT-0101 A and B was conducted by the licensee for the time period from 1986 to present. No work orders were found indicating these instruments were inoperable during power operation. Additionally, the licensee does have an approved procedure for performing a safe shutdown in the event containment instrumentation is unreliable; Emergency Operating Procedure (EOP) 9.0, Functional Recovery. The NRC staff finds the licensee's response acceptable.

Secondly, the control room operator's ability to recognize and assess the effects of a fire in the Containment Air Room was not adequately addressed in that no procedural guidance is available. The staff reviewed the licensee's procedure entitled Fire Which Threatens Safety Related Equipment, ONP25.1, and found that it does not address a fire in the Containment Air Room. The licensee committed to address a Containment Air Room fire in both this procedure and Emergency Maintenance Procedure PFM-E-1, Emergency Post Fire Maintenance Guideline Repair Procedure in a Safe and Expedient Manner. These procedures were updated prior to start-up from the recent refueling outage. The NRC staff finds this acceptable.

#### VI.

Consumers Power Company has shown that based on the amount and type of combustibles, and type of ignition source, a fire in the Containment Air Room is extremely unlikely. If a fire were to occur it would most likely be a small self-extinguishing fire that would generate dense smoke. If

a much larger fire were to occur, the licensee has analyzed for its effect on safety-related instrumentation in the room and shown that sufficient instruments would be operable to safely shut down the plant. The staff agrees with the licensee's determination and considers the Containment Air Room configuration, coupled with the administrative controls to minimize combustibles and provide procedural guidance to operators in case of fire, acceptable.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of appendix R to 10 CFR part 50. Specifically, the underlying purpose of appendix R, section III.G.2.d is to assure that a suitable complement of safe-shutdown equipment will be available, post-fire, to achieve and maintain hot shutdown of the reactor. The analysis of worst-case fire in the Containment Air Room indicates that instrumentation will be capable of performing their post-fire shutdown role without additional fire protection enhancements. Therefore, the Commission hereby grants the Exemption request identified in section IV. above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (55 FR 50063).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 21st day of June 1991.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

*Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-15467 Filed 6-27-91; 8:45 am]

BILLING CODE 7550-01-M

[Docket Nos. 50-272 and 50-311]

**Public Service Electric & Gas Co., et al.; 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 Nos. DPR-70 and DPR-75 issued to Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The proposed amendments would revise Technical Specifications (TS) sections 5.3.1 and 5.6.3 by removing the current maximum U-235 enrichment limit. TS 5.6.1 would be revised to allow storage of Westinghouse Standard or Vantage 5H (V5H) fuel with a maximum enrichment limit of 4.55 weight percent (w/o) U-235 provided that the reference infinite multiplication factor (K<sub>inf</sub>) for the fuel assemblies is less than or equal to 1.453 in unborated water at 68 degrees F, in core geometry. The uncertainty values contained in TS 5.6.1.a would be updated to include an uncertainty for Westinghouse Standard and V5H fuel assemblies containing Integral Fuel Burnable Absorber pins. This is in response to the licensees' application for amendment dated November 19, 1990 as supplemented April 1, 1991, May 20, 1991 and June 14, 1991. This was previously noticed on June 12, 1991 (56 FR 27047). This notice supersedes the previous notice in its entirety.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

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:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Because of the conservative methods and assumptions used to evaluate the maximum possible assembly multiplication factor, there is more than reasonable assurance that no significant

hazard based on criticality safety is involved in storing fuel assemblies with enrichments of up to 4.55 w/o U-235, with sufficient IFBAs [Integral Fuel Burnable Assembly], in the spent fuel storage racks under both normal and postulated accident conditions. The calculations used to determine the minimum number of IFBA rods required as a function of enrichment assured an assembly K<sub>inf</sub> less than or equal to that of a fresh 4.05 w/o U-235 assembly with no IFBA under 0 ppm soluble boron conditions. The criticality accidents for 4.05 w/o U-235 fuel have been analyzed previously and there will be no increase in assembly K<sub>inf</sub>.

Additionally, evaluations of reload core designs (using any enrichment) will be performed on a cycle by cycle basis as part of the Reload Safety Evaluation (RSE) process to ensure that the reactor operation is consistent with the current safety analysis. Therefore, there is no increase in the probability or consequences of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident. The increase in enrichment to 4.55 w/o U-235 involved the performance of evaluations to envelope the corresponding changes in reactivity. Use of the reactivity equivalencing procedures ensures that the spent fuel pool criticality limits are not exceeded. Additionally, there are no proposed changes to the spent fuel rack geometry. (Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.)

3. Involve a significant reduction in a margin of safety. As discussed above, for worst case assumptions the assembly K<sub>inf</sub> values for a maximum enrichment of 4.55 w/o U-235, with a sufficient number of IFBA rods do not exceed those for the previously analyzed 4.05 w/o U-235. Therefore there are no reductions in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final 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 29, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request 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 the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the

Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final 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 a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to 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 Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC, 20005-3502, 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 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 respect to this action, see the application for amendment dated November 19, 1990, as supplemented April 1, 1991, May 20, 1991 and 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 located at Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 25th day of June 1991.

James C. Stone,

*Project Manager, Project Directorate I-2  
Division of Reactor Projects—I/II, Office of  
Nuclear Reactor Regulation.*

[FR Doc. 91-15468 Filed 6-27-91; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Information Collection Submitted to OMB for Expedited Clearance

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice of proposed information  
collection.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980, (chapter 35 of title 44, United States Code), this notice announces a request submitted by the Office of Personnel Management (OPM) to the Office of Management and Budget (OMB) for expedited clearance of two new information collections: Nonforeign Area Cost-of-Living Allowance Background Survey and Nonforeign Area Cost-of-Living Allowance Price Survey. These information collections will be used for annual living cost surveys and for background surveys that will be conducted approximately once every 5 years to evaluate the program. Selected retail, service, realty, and other businesses and local governments will be surveyed in nonforeign allowance areas and in the Washington, DC, area to obtain living cost data. OPM will use these data to develop cost-of-living allowances as authorized by section 5941 of title 5, United States Code. Approximately 300 establishments will be contacted in the background survey, and approximately 5,600 establishments will be contacted in the price survey. OPM estimates that the average background survey interview will take approximately 10 minutes, for a total burden of 50 hours. The average price survey interview will take approximately 7 minutes, for a total burden of 650 hours. A copy of this proposal is reproduced below.

OPM is requesting that OMB approve these information collections within 14 days after the date of publication in the Federal Register.



**Nonforeign Area Cost-of-Living  
Background Survey Information Collection**

Contact Date: \_\_\_\_\_ Allowance Area: \_\_\_\_\_

Contact
Name:
Address:
Phone #:

Purpose of Contact	
Product/Service Info.	
Outlet Availability/Usage	
Transportation Info.	
Local Taxes and Fees	
Mortgage Information	
Real Estate Information	
Other: (specify)	

Findings:
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Remarks:
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### Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures—Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

#### Purpose

The Federal Government pays Cost-Of-Living-Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing cost of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington, DC, area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program. OPM, or its representative, conducts annual surveys to determine living cost differences. OPM conducts fullscale Background Surveys approximately once every five years to review the appropriateness of items, services, and businesses covered in the annual Price Surveys. Elements of the Background Survey may be repeated annually on a limited basis as part of the maintenance of and preparation for the annual Price Surveys.

OPM uses the Background Survey to identify the services, items, quantities, outlets, and locations that will be surveyed to collect living cost data within the allowance areas and the Washington, DC, area. The Background Survey also is used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs.

#### Data Collection

Full-scale Background Surveys are conducted approximately once every five years. OPM identifies major manufacturers, local governments, retail outlets, realty firms, and businesses providing professional services to be surveyed on the basis of business volume and local prominence. Participation is voluntary. Data are collected by telephone and/or personal interview.

#### Confidentiality

All data collected are used only for the purposes described above. The Government pledges to hold all micro or raw data collected in confidence. Names of participating businesses and institutions may be released. Names of

individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

#### Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 5 minutes to 30 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street NW., room CHP 500, Washington, DC, 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-xxxx), Washington, DC, 20503.

### Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures—Interview Guidelines

Seven types of information are collected in background surveys. Information is collected on products and services, outlet availability and usage, transportation, local taxes and fees, mortgage, real estate, and other topics related to the measurement of living costs (e.g., specialized information from local chambers of commerce, colleges, and universities). The following are the typical interview questions used to collect these data.

#### Product or Service Information

1. As a major manufacturer/supplier of \_\_\_\_\_ (a specific product or service, e.g., women's apparel), please identify your items/services that are most popular (e.g., your 'volume sellers').

2. Which of these items are apt to be readily available in the following geographic locations: Alaska (i.e., Anchorage, Fairbanks, and Juneau); Hawaii; Guam; Puerto Rico; the Virgin Islands; and Washington, DC, and suburbs?

3. If the items or services are not universally available, are there other items or services that are of similar function, quality, quantity, size, and type that can be substituted?

4. Is there anything else we should know about your product or service? Are there recommendations you wish to make that would help us in our data collection?

#### Outlet Availability and Usage (Retail)

1. What is your product or service? What is the address(es) of your establishment(s)? If you have multiple locations, which locations have the greatest sales volumes (i.e., are most utilized by consumers)?

2. What are your store/office hours? Do these vary by location?

3. Is your full line of products or services available at all locations?

4. Is there anything else we should know about your outlet(s) or recommendations you wish to make?

#### Transportation Information—Private and Public Services

1. What type of transportation services do you provide (e.g., taxi, bus, subway)?

2. What geographic areas do you service? Which routes are 'typical' or most heavily utilized?

3. What is your rate structure? Does it vary by time of day or season?

4. Is there anything else we should know about transportation usage and services in your area? Are there recommendations you wish to make about our data collection?

#### Transportation Information—Private Use and Maintenance

1. What types of driving are most common in your area? What is the annual distance driven?

2. What types roads and highways are common in your area? What are the road surfaces and conditions?

3. Are there unusual climatic or other factors that affect the fuel economy, maintenance, and depreciation of vehicles?

4. Is there anything else we should know about private transportation usage and maintenance in your area? Are there suggestions or recommendations you wish to make?

#### Local Taxes and Fees

1. What types of taxes, licenses, or fees does your State, territory, or local jurisdiction levy on real estate; personal property; sales (including sales of property); automobiles; utilities; or other goods, services, or transactions?

2. Who levies these taxes, licenses or fees (i.e., State, territory, county, city, other jurisdiction)?

3. What are the rates or schedules for these? How often and when are they levied? Do the rates/schedules vary by location, season, or other factors?

4. Is there anything else we should know about taxes and fees in your area? Are there suggestions or recommendations you wish to make?

#### Mortgage Information

1. What forms of home financing are most common in \_\_\_\_\_ (the allowance area or Washington DC metropolitan area)? (Do not include second mortgages.)

2. What are the typical conditions and limitations on loans?

3. What is the typical amount(s) of down payment required? What are the terms and rates?

4. Are there special subsidies or other practices that influence home financing in your area?

5. Looking back 6 years, what types of changes have occurred that affect home financing?

6. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

#### *Real Estate Information*

1. What is the availability of housing in \_\_\_\_\_ (the allowance area or Washington DC metropolitan area)? Of principal interest is housing for typical salary and wage earners (as distinguished from retirees, tourists, or other special groups) for persons with low, moderate, and high incomes.

2. Describe the communities within your area in which persons \_\_\_\_\_ (specify occupation/income characteristics) typically live. If appropriate, identify separate communities for renters and home owners. Where are these communities located relative to the major Federal activities in the area?

3. Describe the type of housing (e.g., apartment, condominium, town house, detached house).

4. For each type of housing, what are the usual number of rooms, bedrooms, baths, total square footage, lot size, type of construction, and similar characteristics?

5. What types of utilities are available and typically used in these communities: sewer, water, natural gas, electricity, other?

6. Are there any unusual factors that might affect maintenance requirements in your area?

7. Looking back 6 years, describe the changes that significantly affected the

housing market (both rental and owner markets).

8. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

#### *Other Types of Information*

Occasionally, it is necessary to collect information from colleges, universities, chambers of commerce, trade associations, and other groups on specific subjects relating to the analysis of living costs. For example, a university known to be involved in home energy research may be contacted to determine whether there are consumption data by region or allowance area that could have application in the COLA program.

When such data are collected, the purpose and basic structure of the interview will follow the patterns shown above. The substance, however, will vary with the subject matter.

BILLING CODE 6325-01-M

**Nonforeign Area Cost-of Living  
Price Information Collection**

Survey Date: \_\_\_\_\_ Allowance Area: \_\_\_\_\_

Survey Item: \_\_\_\_\_

Description:

Outlet	Price	Quantity	Comments

Remarks:



**Nonforeign Area Cost-of-Living  
Housing Component - Rental Information Collection**

Location: \_\_\_\_\_ Community: \_\_\_\_\_ Date: \_\_\_\_\_

Complex Address Phone #	Rental Type	Bedroom Count	Monthly Rent	Total Room Count	Square Feet	Security Deposit	Utilities	Monthly Heating Cost	Amenities	Restrictions	Total Units	Other

Remarks:

### Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures—Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

#### *Purpose*

The Federal Government pays Cost-of-Living Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington DC area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program.

#### *Data Collection*

OPM, or its representatives, conducts annual Price Surveys to determine living cost differences. Local governments, retail outlets, realty firms, and businesses providing professional and other services to be surveyed are identified through the use of full-scale Background Surveys, conducted approximately once every five years. Participation in the Price Surveys is voluntary. Data are collected by telephone and/or personal interview.

Wherever practical and appropriate, the price of each good or service is obtained from at least three outlets in each allowance area and at least six outlets in the reference area (i.e., the Washington, DC, area). Realty data may be obtained from one or multiple sources, as appropriate.

#### *Confidentiality*

All data collected are used only for the purposes described above. The Government pledges to hold all micro or raw data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

#### *Public Burden Information*

Public burden reporting for this collection of information is estimated to vary from 1 to 20 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management,

1900 E Street, NW., room 6410, Washington, DC, 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-xxxx), Washington, DC, 20503.

### Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures—Interview Guidelines

Three types of information are collected in price surveys: price of goods and services, rental prices and related information, and home owner prices and related information. The following are the typical interview questions used to collect these data.

#### *Price Information Collection*

1. What is the regular (non-sale) price of \_\_\_\_\_ (a specific item or service)?

Examples of items include, but are not limited to:

Chuck Roast, Bone In.

Price per pound. Average size package (e.g., not a 'family' or 'bonus' pack).

1st Choice: Arm pot roast.

2nd Choice: Eye roast.

Peas, Frozen.

Price for 10 ounce package.

1st Choice: Bird's Eye

2nd Choice: Major brand of equivalent quality.

Men's Jeans.

Price for one pair of blue jeans.

1st Choice: Levi's # 501 jeans.

2nd Choice: Equivalent quality jeans.

Automobile, New.

'Sticker' price of current year model Honda Civic DX, four door sedan, 1.5 liter, four cylinder engine (Price options, fees, financing, and taxes separately.)

Example of services include, but are not limited to:

Restaurant Service.

Price of seafood platter—mixed seafood (e.g., not 'steak and lobster' or 'crab leg' platter). If salad and side dish not included with entree, price house salad and baked potato or order of french fries. Include price of coffee, tax, and 15 percent tip.

Film Developing.

Price to process and print 35 millimeter, 24 exposure, 100 ASA color roll film. Single prints only, standard size and finish.

Doctor, Office Visit.

Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is all that is needed. Do not include the charge for a complete physical examination, injections, medication, laboratory tests, or similar services.

Oil Change.

Price of a regular oil change including

oil and filter for a current year model Honda Civic DX sedan, 1.5 liter, 4 cylinder engine.

2. Prices of many of the items can be obtained "off-the-shelf" without assistance. Occasionally, when a specific item is not available, assistance from sales or other personnel may be required to identify and price substitution items of comparable quality and quantity.

3. Prices of cost services are obtained by telephone or personal interview. A few services are priced with little or no assistance. For example prices may be obtainable from a displayed price schedule, list, and menu.

#### *Housing Component—Rental Information Collection*

1. Describe the location, size, layout, number and types of rooms, and square footage of your rental units.

2. Are they apartments, duplexes, town houses, detached houses, or other types of units? Describe.

3. Are there additional amenities (e.g., pool, sauna, tennis courts, gym)? If so, describe.

4. What is the monthly rent? What is the amount of the security deposit (if any)? What other kinds of fees or assessments are there?

5. Are utilities included? Which ones? If you can, please provide information on average monthly or annual costs of utilities paid by tenants.

6. Are term leases usually required? What are the conditions and penalties associated with the lease?

7. Are there any special restrictions or other factors we should know about (e.g., seasonal tourist trade)?

#### *Housing Component—Information Collection for Comparable Sales*

1. Describe the location, size, layout, number and types of rooms, and square footage of some your recent home sales.

2. Were they condominiums, duplexes, town houses, detached houses, or other types of dwellings? Describe.

3. Were there any atypical characteristics (e.g., extra large lot sizes, beach front, desirable/undesirable locations)?

4. Are there additional amenities provided by the developer, homeowners association, or similar community group (e.g., pool, sauna, tennis courts, gym)? If so, describe facilities and charges.

5. What was the selling price and date of sale?

6. What are the real estate taxes?

7. Do you have any data on utilities relating to these homes?

8. In the past year or so, what has been the average appreciation rate of

property in this community? Looking back over the past six years, has this rate changed? How?

9. Describe current market conditions (e.g., soft, booming, so-so). How has this affected housing prices? Describe the housing market over the past six years.

10. Are there any special considerations or other factors we should know about (e.g., retirement/tourist trade) that might affect the housing market in this community?

[FR Doc. 91-15463 Filed 6-27-91; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements filed during the Week Ended June 21, 1991

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 47609.

*Date filed:* June 21, 1991.

*Parties:* Members of the International Air Transport Association.

*Subject:* MV/PSC/078 dated May 2, 1991; MV S053 (Reso 740—Interline baggage tag).

*Proposed Effective Date:* August 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 91-15447 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-62-M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 21, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 47603

*Date filed:* June 18, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 16, 1991.

*Description:* Application of Air Outre Mer, S.A., pursuant to section 402 of the Act and subpart Q of the regulations requests a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail between Paris, France, and Miami, Florida, and in charter air transportation between points in France and points in the United States, subject to the regulations of the Department.

*Docket Number:* 47605

*Date filed:* June 19, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 17, 1991.

*Description:* Application of Jetall Holdings Corporation, pursuant to section 402 of the Act and subpart Q of the regulations, applies for a charter-only foreign air carrier permit to operate charter foreign air transportation of property with Convair 580 or equivalent aircraft on routes between Canada and the United States, each of which would be between one or more coterminal points in Canada, on the one hand, and a terminal point in the United States, on the other.

*Docket Number:* 47606

*Date filed:* June 21, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 19, 1991.

*Description:* Application of Southeast Airlines Corporation, pursuant to section 401(d)(1) of the Act and subpart Q of the regulations, applies for a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

*Docket Number:* 47607

*Date filed:* June 21, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 19, 1991.

*Description:* Application of Viscount Air Service, Inc., pursuant to section 401(d) of the Act and subpart Q of the regulations applies for a certificate of public convenience and necessity authorizing in interstate and overseas charter air transportation of persons, property and mail.

*Docket Number:* 47608

*Date filed:* June 21, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 19, 1991.

*Description:* Application of Viscount Air Service, Inc., pursuant to section 401(d) of the Act and subpart Q of the regulations applies for a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of persons, property, and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points in the Caribbean Basin, Mexico, and Central America as far south as Panama.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-15446 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-62-M

## Office of the Secretary

### Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on June 24, 1991

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 24, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

#### FOR FURTHER INFORMATION CONTACT:

John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 368-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the

proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

#### Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

#### Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 24, 1991.

*DOT No:* 3502.

*OMB No:* New.

*Administration:* Federal Aviation Administration.

*Title:* FAA Research and Development Grants.

*Need for Information:* To administer the FAA grants program for research and development.

*Proposed Use of Information:* Information is required from grantees for the purpose of grant administration and review in accordance with applicable OMB circulars.

*Frequency:* On occasion, quarterly, and semi-annually.

*Burden Estimate:* 2,800 hours.

*Respondents:* State and local governments, Businesses, Non-profit institutions.

*Form(s):* FAA Forms 9550-VV, 9550-XX, 9550-YY, 9550-ZZ, and SF-269, 270, and 272.

*Average Burden Hours Per Response:* 3 hours (Form 9550-VV); 2 hours (Form 9550-XX); 3 hours (Form 9550-YY); 1 hour (Form 9550-ZZ); 2 hours (SF-269); 1 hour (SF-270); and 2 hours (SF-272).

*DOT No:* 3503.

*OMB No:* 2120-0043.

*Administration:* Federal Aviation Administration.

*Title:* Recording of Aircraft Conveyances and Security Documents.

*Need for Information:* Information is needed for security conveyances such as mortgages submitted by the public for recording against aircraft, engines, propellers and spare parts locations.

*Proposed Use of Information:* To maintain a system for the recording of

security conveyances affecting title to or interest in U.S. civil aircraft.

*Frequency:* On occasion.

*Burden Estimate:* 60,973 hours.

*Respondents:* Anyone.

*Form(s):* AC Form 8050-41.

*Average Burden Hours Per Response:* 1 hour.

*DOT No:* 3504.

*OMB No:* New.

*Administration:* Federal Railroad Administration.

*Title:* Qualification of Locomotive Engineers.

*Need for Information:* To determine a person's qualifications to be a locomotive engineer.

*Proposed Use of Information:* To evaluate the qualifications and fitness of locomotive engineers.

*Frequency:* On occasion and recordkeeping.

*Estimated Number of Respondents:* 605 Railroads.

*Burden Estimate:* 218,280 hours.

*Respondents:* 361 hours.

*Form(s):* None.

*DOT No:* 3505.

*OMB No:* 2106-0023.

*Administration:* Department of Transportation, Office of the Secretary.

*Title:* Procedures and Evidence Rules for Air Carrier Authority Applications.

*Need for Information:* Regulatory Compliance.

*Proposed Use of Information:* For review of an air carrier's fitness to provide passenger and cargo service.

*Frequency:* On occasion.

*Burden Estimate:* 8,048 hours.

*Respondents:* U.S. air carriers.

*Form(s):* None.

*Average Burden Hours Per Response:* 39 hours, 48 minutes.

*DOT No:* 3506.

*OMB No:* 2138-0009.

*Administration:* Research and Special Programs Administration.

*Title:* Form 298-C Report of Financial and Operating Statistics for Small Aircraft Operators.

*Need for Information:* To analyze airline enplanement data and financial statistics.

*Proposed Use of Information:* Monitor air carrier fitness, set Essential Air Service subsidy levels, set Alaska mail rates and administer airport development.

*Frequency:* Quarterly.

*Burden Estimate:* 7,092 hours.

*Respondents:* Small certificated/commuter air carriers.

*Form(s):* Form 298-C.

*Average Burden Hours Per Respondent:* 9 hours per commuter air carrier and 13 hours, 30 minutes per small certificated air carrier (quarterly).

*DOT No:* 3507.

*OMB No:* 2130-0035.

*Administration:* Federal Railroad Administration.

*Title:* Railroad Operating Rules.

*Need for Information:* To determine the condition of operating rules and practices with respect to trains and the instructions railroads provide their employees.

*Proposed Use of Information:* This information is utilized to consider waiver and petition applications, and to conduct accident investigations involving operating practices.

*Frequency:* Recordkeeping, on occasion and annually.

*Burden Estimate:* 88,285 hours.

*Respondents:* 605 Railroads.

*Form(s):* FRA-F-6180.77.

*Average Burden Hours Per Response:* 146 hours.

*DOT No:* 3508.

*OMB No:* 2130-0524.

*Administration:* Federal Railroad Administration.

*Title:* Transmission of Train Orders by Radio.

*Need for Information:* To assure safe operating practices in the use of radio communications in railroad operations.

*Proposed Use of Information:* FRA uses this information to assure safe uniform procedures covering the use of radio phone technology in railroad operations.

*Frequency:* Recordkeeping.

*Burden Estimate:* 240,000 hours.

*Respondents:* 400 Railroads.

*Form(s):* None.

*Average Burden Hours Per Respondent:* 600 hours

*DOT No:* 3509.

*OMB No:* 2130-0532.

*Administration:* Federal Railroad Administration.

*Title:* Railroad User Fees.

*Need for Information:* To determine a railroad's equitable share of the total industry user fee.

*Proposed Use of Information:* To assure that each railroad is assessed their fair share of the industry-wide user fee.

*Frequency:* On occasion, annually and recordkeeping.

*Burden Estimate:* 2,279 hours.

*Respondents:* 586 Railroads.

*Form(s):* FRA-F-6180.89 and FRA-F-6180.90.

*Average Burden Hours Per Respondent:* 4 hours.

*DOT No:* 3510.

*OMB No:* 2130-0004.

*Administration:* Federal Railroad Administration.

*Title:* Railroad Locomotive Safety Standards.

**Need for Information:** To provide a written record that a locomotive has been inspected and is in proper condition for service.

**Proposed Use of Information:** This information is utilized to assure and promote safe and suitable locomotives and as the written record in past-accident investigations.

**Frequency:** Recordkeeping and on occasion.

**Burden Estimate:** 1,114,661 hours.

**Respondents:** 605 Railroads.

**Form(s):** FRA-F-6180.49A.

**Average Burden Hours Per**

**Respondent:** 1.824 hours.

**DOT No:** 3511.

**OMB No:** 2125-0019.

**Administration:** Federal Highway Administration.

**Title:** Federal-aid Highway Construction Equal Employment Opportunity.

**Need for Information:** For the FHWA to carry out its responsibility to ensure equal opportunity in contractors' employment practices on Federal-aid projects.

**Proposed Use of Information:** For FHWA to determine patterns and trends of equal employment in the highway construction industry, and for State highway agencies to report to FHWA a summary of Federal-aid highway construction information.

**Frequency:** Annually.

**Burden Estimate:** 6,580 hours.

**Respondents:** State highway agencies.

**Form(s):** PR-1391 and PR-1392.

**Average Burden Hours Per**

**Respondent:** 1 hour (Form PR-1391) and 40 hours (Form PR-1392).

**DOT No:** 3512.

**OMB No:** 2137-0034.

**Administration:** Research and Special Programs Administration.

**Title:** Hazardous Materials Shipping Papers.

**Need for Information:** Shipping papers are used in transportation to identify the presence of hazardous materials, their quantity, and identification. This information is used to promote transportation safety by assuring that carriers are properly loaded and identifies hazardous cargo to emergency response personnel in case of incident.

**Proposed Use of Information:** To assist emergency response personnel in mitigation actions at hazardous materials incidents, and to inform carriers and transportation facility operators of the risks and precautions associated with the materials.

**Frequency:** Each shipment (hazardous materials).

**Burden Estimate:** 6,288,750 hours.

**Respondents:** Shippers and carriers.

**Form(s):** None.

**Average Burden Hours Per**

**Respondent:** 2 hours, 15 minutes.

**DOT No:** 3513.

**OMB No:** 2137-0022.

**Administration:** Research and Special Programs Administration.

**Title:** Recordkeeping and Information Collection for Cylinders.

**Need for Information:** To verify that charged cylinders are safe for shipment in interstate commerce.

**Proposed Use of Information:** To verify that cylinders are properly marked, retested, and repaired, and safely charged so as to maintain the safety standards set forth in the Federal regulations for hazardous materials transportation.

**Frequency:** As required in 49 CFR 173.34 and 173.303(d) for various cylinders.

**Burden Estimate:** 122,084 hours.

**Respondents:** Businesses, Farmers, Individuals, State and Local Governments.

**Form(s):** Application for Registration of Cylinder Requalification Facility.

**Average Burden Hours Per**

**Respondent:** 1 hour, 12 minutes.

**DOT No:** 3514.

**OMB No:** 2125-0034.

**Administration:** Federal Highway Administration.

**Title:** Certification of Enforcement of Vehicle Size and Weight Laws.

**Need for Information:** For each State to annually certify that it is enforcing all size and weight law regulations.

**Proposed Use of Information:** For FHWA to evaluate the effectiveness of a State's vehicle size and weight law program.

**Frequency:** Annually.

**Burden Estimate:** 4,160 hours.

**Respondents:** State highway agencies.

**Form(s):** None.

**Average Burden Hours Per**

**Respondent:** 40 hours.

**DOT No:** 3515.

**OMB No:** 2132-0529.

**Administration:** Urban Mass Transportation Administration.

**Title:** Unified Planning Work Program (UPWP), Transportation Plan and the Transportation Improvement Program (TIP).

**Need for Information:** To describe transportation planning activities to be funded during the next two-year period using FHWA and UMTA funds.

**Proposed Use of Information:** The information is used for the grant review and approval process by State and Metropolitan Planning Organizations as the basis for making investment decisions and as a management tool regarding the use of Federal and non-Federal capital funds.

**Frequency:** Annually and biennially.

**Burden Estimate:** 294,769 hours.

**Respondents:** State and local governments and Metropolitan Organizations.

**Form(s):** None.

**Average Burden Hours Per**

**Respondent:** 482 hours.

**DOT No:** 3518.

**OMB No:** 2133-0006.

**Administration:** Maritime Administration.

**Title:** Request for transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen-Owned Documented Vessels.

**Need for Information:** To comply with section 9, Shipping Act, 1916, as amended, which requires MARAD's approval of transfers.

**Proposed Use of Information:** To assist in determination as to whether vessel proposed for transfer is needed for retention under U.S. Flag.

**Frequency:** On occasion.

**Burden Estimate:** 550 hours.

**Respondents:** Businesses and Individuals.

**Form(s):** MA-29, MA-29A, and MA-29B.

**Average Burden Hours Per**

**Respondent:** 2½ hours.

**DOT No:** 3517.

**OMB No:** New.

**Administration:** National Highway Traffic Safety Administration.

**Title:** Drug Offender's License Suspension Certification.

**Need for Information:** To encourage States to enact and enforce drug offenders' driver's license suspension.

**Proposed Use of Information:** To provide procedures to State highway construction grant recipients on how to certify compliance with the provisions of Public Law 101-215. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense.

**Frequency:** Annually.

**Burden Estimate:** 260 hours.

**Respondents:** States.

**Form(s):** Forms HS-62, 62A, and 217 may be used; these forms are cleared under 2127-0003.

**Average Burden Hours Per**

**Respondent:** 5 hours.

**DOT No:** 3518.

**OMB No:** 2127-0044.

**Administration:** National Highway Traffic Safety Administration.

**Title:** Names and Addresses of First Purchasers of Motor Vehicles.

**Need for Information:** To directly notify first purchasers of new motor vehicles in case there is a recall of their vehicle.

**Proposed Use of Information:** Motor vehicle manufacturers are required to

record and retain the names and addresses of first purchasers of new motor vehicles, so that the manufacturer can directly notify those persons if their vehicle is recalled.

*Frequency:* On occasion.

*Burden Estimate:* 950,000 hours.

*Respondents:* Businesses.

*Form(s):* None.

*Average Burden Hours Per*

*Respondent:* 3 minutes.

Issued in Washington, DC on June 24, 1991.

**Cynthia C. Rand,**

*Director of Information Resource Management.*

[FR. Doc. 91-15448 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-62-M

### Federal Aviation Administration

[File No. AC 21-XX]

#### Proposed Advisory Circular: Application Procedures for Alteration Approvals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of Proposed Advisory Circular 21-XX and request for comments.

**SUMMARY:** This notice announces the availability of and requests comment on a proposed Advisory Circular (AC) 21-XX which describes the application procedures for alteration approvals performed using the field approval process. It also provides a method that may be used by applicants and FAA flight standards and type certification personnel to accomplish field approvals. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATES:** Comments must be received on or before August 27, 1991.

**ADDRESSES:** Comments on proposed AC 21-XX may be mailed or delivered to: Federal Aviation Administration; Policy and Procedures Branch (AIR-110); 800 Independence Avenue SW.; Washington, DC 20591. A copy of proposed AC 21-XX, Application Procedures for Alteration Approvals, may be obtained by writing to the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. T. Lynn Brown, Policy and Procedures Branch, AIR-110, at the address above, telephone (202) 267-9589.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the AC

number and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing AC 21-XX. Comments may be inspected at the above address between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

#### Background

The Federal Aviation Act of 1958 directs the Federal Aviation Administration (FAA) to promote safety of flight of civil aircraft in air commerce by prescribing and revising minimum standards governing the design, materials, workmanship, construction, and performance of aircraft, aircraft engines, and propellers. The Aircraft Certification Regulatory Program (ACRP) was developed to accomplish this mission. As part of the ACRP, the Aircraft Certification Service administers the aircraft alteration program to find compliance with the prescribed standards and to maintain certificate integrity (continued airworthiness).

Proposed AC 21-XX describes the alteration approval process. It also provides a method for accomplishing aircraft alternations. The draft AC is intended to provide guidance to the general public and to FAA flight standards and type certification personnel for administering the alteration approval process. The method of accomplishing the alteration approval process described in the AC is not mandatory. As such, the terms "shall" and "must" used in the AC pertain to an applicant who chooses to follow the method.

Issued in Washington, DC, on March 8, 1991.

**John K. McGrath,**

*Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 91-15413 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-13-M

#### [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 positions.

**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 18, 1991.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rule Docket (AGC-10), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation 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.:* 25918.

*Petitioner:* AFM Corporation dba Executive Jet Westfield.

*Sections of the FAR Affected:* 14 CFR 91.511(a)(2) and 135.165(b).

*Description of Relief Sought:* To extend Exemption No. 5112, which allows petitioner to operate specific aircraft in extended overwater operations using one long-range navigation system and one high-frequency communication system.

#### Dispositions of Petitions

*Docket No.:* 23465.

*Petitioner:* Everts Air Fuel, inc.

*Sections of the FAR Affected:* 14 CFR 91.9(a) (old 91.31(a)).

*Description of Relief Sought/*

*Disposition:* To extend Exemption No. 4296, as amended, which allows the operation of Douglas DC-6 cargo-only aircraft, N151 and N251CE, at a 5 percent increase of zero fuel weight and landing weight. *Grant, June 12, 1991, Exemption No. 4296C.*

*Docket No.:* 26169.

*Petitioner:* Clackamas County Sheriff's Department.

*Sections of the FAR Affected:* 14 CFR 61.118.

*Description of Relief Sought/*

*Disposition:* To allow petitioner's Aero Squadron members to be reimbursed for fuel, oil, and maintenance while serving as pilot in command during Aero Squadron missions. *Grant, June 10, 1991, Exemption No. 5321.*

*Docket No.:* 26194.

*Petitioner:* Northeast Jet Company dba Private Jet Services.

*Sections of the FAR Affected:* 14 CFR 91.511(a)(1)(iv), 135.165 (a)(5) and (a)(6), and 135.165 (b)(5), (b)(6), and (b)(7).

*Description of Relief Sought/*

*Disposition:* To allow petitioner to operate certain extended overwater flights with only one long-range navigation system and one high-frequency communications system. *Grant, May 23, 1991, Exemption No. 5314.*

*Docket No.:* 26200.

*Petitioner:* Security Aviation, Inc.

*Sections of the FAR Affected:* 14 CFR 43.3(g).

*Description of Relief Sought/*

*Disposition:* To allow pilots employed by petitioner to remove or replace passenger seats and/or medivac beds for aircraft used in part 135 operations. *Grant, June 5, 1991, Exemption No. 5319.*

*Docket No.:* 26440.

*Petitioner:* Falcon Jet Corporation.

*Sections of the FAR Affected:* 14 CFR 47.65 and 47.69(b).

*Description of Relief Sought/*

*Disposition:* To allow petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the U.S. citizenship requirements and to conduct limited flights outside of the United States under a Dealer's Aircraft Registration Certificate. *Grant, May 30, 1991, Exemption No. 5315.*

*Docket No.:* 26464.

*Petitioner:* Av Atlantic Airline.

*Sections of the FAR Affected:* 14 CFR 121.358(c)(1).

*Description of Relief Sought/*

*Disposition:* To allow petitioner to

submit a request for approval of a retrofit schedule for approved windshear equipment after the June 1, 1990, deadline. *Grant, May 23, 1991, Exemption No. 5313.*

*Docket No.:* 26467.

*Petitioner:* Regional Airline Association.

*Sections of the FAR Affected:* 14 CFR 135.152(b).

*Description of Relief Sought/*

*Disposition:* To allow U.S. regional airlines to operate the Shorts 330 aircraft in revenue service until May 1, 1991, without requiring those aircraft to be retrofitted with flight data recorders. *Denial, June 7, 1991, Exemption No. 5320.*

*Docket No.:* 26507.

*Petitioner:* Llano Estacado Soaring Society.

*Sections of the FAR Affected:* 14 CFR 61.3 and 91.203.

*Description of Relief Sought/*

*Disposition:* To allow foreign-built gliders and foreign pilots to practice for and participate in the 15-meter National Soaring Championships from June 12 through 28, 1991, in Hobbs, New Mexico. *Partial Grant, May 23, 1991, Exemption No. 5306.*

*Docket No.:* 26510.

*Petitioner:* Enstrom Helicopter Corporation.

*Sections of the FAR Affected:* 14 CFR 47.65.

*Description of Relief Sought/*

*Disposition:* To allow petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the U.S. citizenship requirements. *Grant, May 30, 1991, Exemption No. 5316.*

[FR Doc. 91-15414 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-13-M

**Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on July 23, 1991, at 9 a.m. Arrange for oral presentations by July 16, 1991.

**ADDRESSES:** The meeting will be held in the Boardroom, Air Transport Association of America, 5th floor, New York Avenue NW., Washington, DC 20006-5206.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marge Ross, Aircraft Certification

Service (AIR-1), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on July 23, 1991, at the Air Transport Association of America Headquarters, 1709 New York Avenue NW., Washington, DC 20006-4000. The agenda for this meeting will include:

(1) A briefing from the Chair of the Performance Standards Working Group, which is considered whether new or revised standards for emergency evacuation can and should be stated in terms of safety performance, rather than as specific design requirements. The Chair will report on the organization and membership of the working group, the tasks completed thus far, the tasks planned for the future, and the timetable for completion of those tasks.

(2) A discussion of the presentation, consideration of new tasks resulting from those discussions, and the formation or modification of working groups to perform existing or new tasks identified during the discussion.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by July 16, 1991, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on June 21, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-15416 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-13-M

**Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory

Committee Air Carrier/General  
Aviation Maintenance Subcommittee.

**DATES:** The meeting will be held on July 17, 1991, at 9 a.m. Arrange for oral presentations by July 10, 1991.

**ADDRESSES:** The meeting will be held in the DOT Headquarters building, 400 Seventh Street, SW., Washington, DC 20509, room 4234/36/38.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7461.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on July 17, 1991. The agenda for the committee will include discussions on rulemaking and/or guidance relating to establishment of current standard weights for passengers and baggage, development of a notice of proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of a NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR 36), and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before July 10, 1991, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting coordinator. Arrangements may be made by contacting the meeting coordinator listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on June 24, 1991.

William J. White,  
Executive Director, Air Carrier/General  
Aviation Maintenance Subcommittee,  
Aviation Rulemaking Advisory Committee.  
[FR Doc. 91-15415 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-13-M

**Maritime Administration**

[Docket A-182]

**Central Gulf Lines, Inc.; Remand of April 24, 1991 Decision of the Maritime Subsidy Board on Section 615 of the Merchant Marine Act, 1936, as Amended**

Section 615 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1185, temporarily enabled the grant of authorization to operators receiving or applying for operating-differential subsidy to construct, reconstruct, or acquire vessels of over five thousand deadweight tons in a foreign shipyard.

On November 10, 1981, the Maritime Subsidy Board (Board) made certain determinations with respect to implementation of section 615 among which was:

IX. Determined that the meaning of "acquire" as set forth in section 615 pertains to a vessel already under construction in a foreign shipyard or not yet delivered to the original vessel purchaser, e.g., a vessel on which title has not passed from the shipyard.

The Board authorized the assignment of three section 615 authorizations to Central Gulf Lines, Inc. (CGL) on April 1, 1987. On April 24, 1991, the Board modified its November 10, 1981, action to determine, with regard to the proposed use of the section 615 authorizations by CGL, that the term "acquire" in section 615 of the Act, does not preclude acquisition in a foreign shipyard of a modern technologically advanced existing vessel not more than 10 years of age that has been reconstructed or modified.

Parties objecting to the Board's April 24, 1991 decision—Liberty Maritime Corporation; Marine Transport Lines, Inc.; Afram Lines (USA), Ltd.; OMI Corp.; the Equity companies—requested Secretarial review.

The Secretary of Transportation on June 17, 1991, found that the petitioners raised issues that were not before the Board at the time of its decision and remanded the matter to the Board for further development of the record of the Board's action of April 24, 1991. The remand is without prejudice to the Board in whatever decision it may decide to make.

Any person, firm, or corporation having any interest in the subject matter and desiring to submit comments must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. The petitions for Secretarial review submitted by the above-named parties will be placed in this docket and

considered by the Board on remand. Comments or further comments must be received no later than 5 p.m. on July 9, 1991. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

Dated: June 25, 1991.

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 91-15559 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-81-M

**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

[Department Circular—Public Debt Series—No. 19-91]

**Treasury Notes of June 30, 1993, Series AC-1993**

June 20, 1991.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately \$12,500,000,000 of United States securities, designated Treasury Notes of June 30, 1993, Series AC-1993 (CUSIP No. 912827 B3 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated July 1, 1991, and will accrue interest from that date, payable on a semiannual basis on December 31, 1991, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of \$5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketplace securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, June 25, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, June 24, 1991, and received no later than Monday, July 1, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g. 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any

noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price of each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places

on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

### 5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, July 1, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 27, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the per

amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 91-15400 Filed 6-25-91; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 20-91]

### Treasury Notes of June 30, 1996, Series Q-1996

June 20, 1991.

#### 1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately \$9,250,000,000 of United States securities, designated Treasury Notes of June 30, 1996, Series Q-1996 (CUSIP No. 912827 B4 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price

equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

#### 2. Description of Securities

2.1. The Notes will be dated July 1, 1991, and will accrue interest from that date, payable on a semiannual basis on December 31, 1991, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of \$1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

#### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, June 26, 1991, prior to 12: noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1:

p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 25, 1991, and received no later than Monday, July 1, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4,

noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par

#### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

#### 5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before

Monday, July 1, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 27, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 91-15401 Filed 6-25-91; 11:29 am]

BILLING CODE 4810-40-M

[Number: 102-12]

#### Delegation of Authority to the Senior Official

Date: June 21, 1991.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b) and 44 U.S.C. 3506, and pursuant to 5 CFR 1320.8, the Deputy Assistant Secretary for Information Systems is designated as the Department's senior official to carry out the Department's responsibilities under chapter 35 of title 44, United States Code.

Nicholas F. Brady,

*Secretary of the Treasury.*

[FR Doc. 91-15384 Filed 6-27-91; 8:45 am]

BILLING CODE 4810-25-M

#### Fiscal Service

[Dept. Circ. 570, 1990-Rev., Supp. No. 14]

#### Surety Companies Acceptable on Federal Bonds, Termination of Authority; United Southern Assurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to United Southern Assurance Company of Melbourne, Florida, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27369, July 2, 1990.

With respect to any bonds currently in force with United Southern Assurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 25, 1991.

Diane E. Clark,

*Assistant Commissioner, Financial Information, Financial Management Service.*

[FR Doc. 91-15470 Filed 6-27-91; 8:45 am]

BILLING CODE 4810-35-M

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of priority topics for the 1992 amendment cycle.

**SUMMARY:** The Commission is continuing its ongoing study of the implementation of the sentencing guidelines and has designated specific issues and projects for priority consideration over the course of the next year. Comment is requested on these issues. Additionally, in preparation for the 1992 amendment cycle that culminates in the submission to Congress of proposed guideline amendments no later than May 1, 1992, the Commission solicits comment on: (1) Additional areas of Commission study; (2) specific problem areas in guideline application; and (3) the adequacy of current training programs and informational materials.

**DATES:** Public comment for this information-gathering phase of the 1992 amendment cycle should be received by the Commission no later than August 31, 1991.

**ADDRESSES:** Comment should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., suite 1400, Washington, DC 20004. Attn: Michael Courlander.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Information Specialist (202) 626-8500.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 894(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise promulgated guidelines and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

The Commission is beginning the formal 1992 amendment process by soliciting comment on guideline issues and potential amendments early in the

amendment cycle. This solicitation is in addition to the Commission's traditional formal publication of proposed amendments and amendment issues in the **Federal Register** that occurs after January 1st of each year.

To assist in setting priorities and allocating resources, the Commission requests comment on the following topics: (1) Problem areas in guideline application; (2) issues identified by the Commission and assigned to staff working groups; (3) additional issues for Commission study; (4) specific suggestions for amendments to the guidelines; and (5) adequacy of current training programs and informational materials.

As in past amendment cycles, the Commission intends to utilize interdisciplinary staff working groups to comprehensively analyze designated priority issues using legal, research, monitoring, and training resources. The working groups will present the Commission with recommendations that may include improved training, amendments, statutory changes, and areas for further research and study. Because of the nature and scope of the issues under review, not every working group is designed to complete its work in time for action during the 1992 amendment cycle.

Currently, the Commission has formed working groups to study the following priority areas: (1) Acceptance of responsibility; (2) alternatives to imprisonment; (3) criminal history; (4) departures; (5) drug offenses (focusing primarily on the appropriateness of the role in the offense adjustment for less culpable offenders); (6) the Congressionally mandated four-year evaluation of the guidelines; (7) mandatory minimum sentencing statutes; (8) fine guidelines for organizations committing environmental offenses (and review of the environmental guidelines for individual offenders); (9) and sexual offenses involving child victims.

As resources permit, the Commission also intends to establish working groups to address the following issues: fine guidelines for food and drug offenses committed by organizations; directives to the Commission concerning prison sentence implementation, immigration offenses, fraud offenses and other guidelines employing similarly-structured monetary tables, and review of the probation and supervised release revocation policy statements.

The Commission also intends to study discrete guideline topics such as money laundering and the Chapter Three grouping rules, but does not presently

contemplate establishing formal staff working groups to address these issues.

**Authority:** 28 U.S.C. 994(o), (p).

William W. Wilkins, Jr.

*Chairman.*

[FR Doc. 91-15444 Filed 6-27-91; 8:45 am]

BILLING CODE 2210-40-M

## DEPARTMENT OF VETERANS AFFAIRS

### Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Public Law 92-463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 10, 1991, at 2 p.m.

Wednesday, July 24, 1991, at 2 p.m.

Wednesday, August 7, 1991, at 2 p.m.

Wednesday, August 21, 1991, at 2 p.m.

Wednesday, September 4, 1991, at 2 p.m.

Wednesday, September 18, 1991, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C. 552(b)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 19, 1991.

By Direction of the Secretary.  
Sylvia Chavez Long,  
Committee Management Officer.  
[FR Doc. 91-15465 Filed 6-27-91; 8:45 am]  
BILLING CODE 8320-01-V

Executive Act Meetings

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# Sunshine Act Meetings

Federal Register

Vol. 56, No. 125

Friday, June 28, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:02 p.m. on Tuesday, June 25, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: FDIC Appointment of FDIC as Receiver of Insured State Depository Institutions.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Changes to the Section 19 Policy Statement and Guidelines.

By the same majority vote, the Board further determined that no notice earlier than June 20, 1991, of these changes in the subject matter of the meeting was practicable.

Dated: June 26, 1991.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 91-15546 Filed 6-26-91; 10:24 am]

BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)),

notice is hereby given that at its meeting held at 2:44 p.m. on Tuesday, June 25, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Director), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr. and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of a matter relating to the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(b)(c)(2) and (c)(9)(B)).

Dated: June 26, 1991.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 91-15546 Filed 6-26-91; 10:24 am]

BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:03 a.m. on Wednesday, June 26, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the probable failure of a certain insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Mr. Jonathan Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was

practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: June 26, 1991.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 91-15598 Filed 6-26-91; 1:55 pm]

BILLING CODE 6714-01-M

## LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

### Office of the Inspector General Oversight Committee Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 28957.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 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. in the Bryce Room of the Hyatt Regency Washington Hotel, 525 New Jersey Avenue, N.W., Washington, D.C.

### CHANGES IN THE MEETING:

The meeting will commence at 8:15 a.m. on July 9, 1991;

The meeting will be held at the Hyatt Regency Washington Hotel at 400 New Jersey Avenue, N.W., Washington, D.C., not at 525 New Jersey Avenue, N.W. as previously announced;

The meeting will commence in the Concord Room; and

The minutes of the Office of the Inspector General Oversight Committee meeting of June 24, 1991 will be subject to approval, not the minutes of the June 3, 1991 meeting as previously announced.

**PLACE:** Hyatt Regency Washington, 400 New Jersey Avenue, N.W., The Concord Room, Washington, D.C. 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 24, 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 26, 1991.  
 Patricia D. Batie,  
 Corporate Secretary.  
 [FR Doc. 91-15636 Filed 6-26-91; 3:31 pm]  
**BILLING CODE 7050-01-M**

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS Meeting Notice**

**TIME AND DATE:** A meeting of the Board of Directors will be held on July 8, 1991. The meeting will commence at 9:00 a.m.  
**PLACE:** Hyatt Regency Washington, 400 New Jersey Avenue, N.W., The Columbia "A" Room, Washington, D.C. 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, privileged or confidential, personal, investigatory and litigation matters as authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (4), (5), (7), and (10)], and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a), (c), (d), (e), (f) and (h)].

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 personal privacy of the employees and applicants for positions, to discuss strictly internal personnel rules and practices, and to discuss matters related to ongoing investigations and litigation. Specifically, the Board of Directors will

hear the Corporation's Acting General Counsel's report on pending litigation to which the Corporation is a party, and may discuss pending personnel actions, to include the status of the recruitment effort related to the position of Inspector General of the Legal Services Corporation. In addition, the Board of Directors may discuss matters related to current investigations being undertaken by the Corporation's Office of the Inspector General, as well as matters related to litigation in which the Corporation is involved.

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda.
2. Approval of Minutes—April 29, 1991.
3. Chairman's Report.
4. President's Report.
5. Consideration of A Motion to Amend Resolution on Board Compensation Adopted on March 25, 1991.
6. Consideration of Report by Office of the Inspector General Oversight Committee.
7. Consideration of Legislative Report and Report by Special Reauthorization Committee.
8. Consideration of Report by Staff on Status of the Competition Study Authorized by the Board of Directors at its March 25, 1991 Meeting.
9. Consideration of Report by Staff on Status of Pending Regulations.
10. Consideration of Annual Meeting with Legal Services Project Representatives.
11. Consideration of Meeting Schedule of the Board of Directors for the Remainder of 1991.
12. Consideration of and, if necessary, Vote on Closure of a Portion of All or Some Meetings Scheduled in Item 11 of this Agenda.

**CONTACT PERSON FOR INFORMATION:**

Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: June 26, 1991.  
 Patricia D. Batie,  
 Corporate Secretary.  
 [Fr Doc. 91-15637 Filed 6-26-91; 3:31 pm]  
**BILLING CODE 7050-01-M**

# Corrections

Federal Register

Vol. 56, No. 125

Friday, June 28, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### 7 CFR Part 1c

## DEPARTMENT OF ENERGY

### 10 CFR Part 745

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1230

## DEPARTMENT OF COMMERCE

### 15 CFR Part 27

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1028

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 22 CFR Part 225

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 60

## DEPARTMENT OF JUSTICE

### 28 CFR Part 46

## DEPARTMENT OF DEFENSE

### 32 CFR Part 219

## DEPARTMENT OF EDUCATION

### 34 CFR Part 97

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 16

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 26

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 46

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 690

## DEPARTMENT OF TRANSPORTATION

### 49 CFR Part 11

### Federal Policy for the Protection of Human Subjects

#### Correction

In rule document 91-14258 beginning on page 28003, in the issue of Tuesday, June 18, 1991, make the following corrections:

#### § ——.101 [Corrected]

1. On page 28012, in the third column, in § ——.101(b)(5), in the third line "of" should read "or".

#### § ——.103 [Corrected]

2. On page 28014, in the third column, in § ——.103(f), in the ninth line "§ ——.03" should read "§ ——.103".

3. On page 28019, in the second column, in the first line "Dated: January 21, 1991." should read "Dated: December 20, 1990."

4. On page 28023, in the first column, in the second line from the bottom "need" should read "end".

5. On pages 28018-28023, the footnote reference [1] is added at the end of each separate agency's adopting statement (following the word "document." and

preceding the CFR part heading). On page 28023 the footnote text set forth below is added at the end of the first column.

<sup>1</sup> Due to an error in the order of the document pages submitted to the Office of the Federal Register, the text of the common rule appears at the end of the common preamble for this document at page 28012.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 56

[Docket No. 87N-DO32]

RIN 0905-AC52

### Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

#### Correction

In rule document 91-14260 beginning on page 28025, in the issue of Tuesday, June 18, 1991, make the following corrections:

#### § 56.107 [Corrected]

1. On page 28028, in the third column, in § 56.107(a), in the third line from the bottom "the" should read "and".

#### § 56.108 [Corrected]

2. On page 28028, in the third column, in § 56.108, between the section heading and paragraph (a) insert "\*\*\* \*\*".

BILLING CODE 1505-01-D

### 45 CFR Part 46

### Federal Policy for the Protection of Human Subjects: Additional Protections for Children Involved as Subjects in Research

#### Correction

In rule document 91-14262 appearing on page 28032, in the issue of Tuesday, June 18, 1991, make the following correction:

#### § 46.401 [Corrected]

On page 28032, in the third column, the section heading should read

"§ 46.401 To what do these regulations apply?"

BILLING CODE 1505-01-D

[Docket No. 88N-0402]

**Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age; Report; Availability**

*Correction*

In notice document 91-13987 beginning on page 27025, in the issue of Wednesday, June 12, 1991, make the following correction:

On page 27025, in the third column, in the "ADDRESSES", in the ninth line after "5285" insert "Port".

BILLING CODE 1505-01-D

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 25**

[CC Docket No. 86-496; FCC 91-136]

**Satellite Communication Services**

*Correction*

In rule document 91-12437 beginning on page 24014, in the issue of Tuesday,

May 28, 1991, make the following correction:

**§ 25.118 [Corrected]**

On page 24019, in the second column, in the first line, the section heading "§ 25.188" should read "§ 25.118".

BILLING CODE 1505-01-D



# Federal Register

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Friday  
June 28, 1991

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## Part II

### **Committee for Purchase from the Blind and Other Severely Handicapped**

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41 CFR Part 51-1 et al.  
**Committee Regulations; Revisions;  
Proposed Rule**

**COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED**

**41 CFR Parts 51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-8, 51-9, and 51-10 (Ch. 51)**

**Revisions to Committee Regulations**

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule is intended to clarify and update the language of regulations governing the Committee for Purchase from the Blind and Other Severely Handicapped and its administration of the Javits-Wagner-O'Day (JWOD) Act. The rule states Government and Committee policy on implementation of the JWOD Act and the duties and responsibilities of the Committee, central nonprofit agencies, nonprofit agencies employing persons who are blind or have severe disabilities, and Government agencies in connection with the JWOD Program. Procedures for environmental analysis are revised in accordance with current guidance from the Council on Environmental Quality. The minimum figure below which fees will not be charged for processing requests under the Freedom of Information Act is changed. The proposed rule will lessen the administrative burden of operating the JWOD Program without increasing the burden on its participants.

**DATES:** Comments must be submitted on or before August 27, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly L. Milkman, (703) 557-1145. Copies of this notice will be made available on request in computer diskette format.

**SUPPLEMENTARY INFORMATION:** This proposed regulation is the result of an extensive review and update by the Committee of its regulations. The regulations have not been reviewed in this comprehensive a fashion since they were promulgated in 1973.

The proposed regulation reflects a general attempt to clarify regulatory language and reflect actual practice at this time. Obsolete references have been updated: e.g., "Department of Health, Education and Welfare" and "Defense Supply Agency" are now "Department of Education" and "Defense Logistics

Agency." Except where quoting the Javits-Wagner-O'Day (JWOD) Act, terminology referring to the community the JWOD Program serves has been modernized as well and changed to reflect a "people first" orientation. "Workshop for the blind" and "workshop for the other severely handicapped," are now "nonprofit agency for the blind" and "nonprofit agency employing persons with severe disabilities." "National Industries for the Severely Handicapped" has been changed to "NISH" to reflect a name change effective May 1, 1991. The term "ordering office" has been deleted in favor of the more broadly defined "contracting activity."

Among the more significant changes made by this proposed regulation, part 51-1, General, has been revised to state at the very beginning of the regulations that it is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the JWOD Program, and that it is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. Part 51-1 has also been rearranged to put the discussion of mandatory source priorities ahead of the list of definitions.

Part 51-2 on Committee responsibilities has been expanded and rearranged to relate more clearly to the steps in the Procurement List addition process. A time limitation on submitting reconsideration requests has been added to § 51-2.6 on Committee reconsideration of Procurement List decisions. A new § 51-2.9 has been added to inform the public of the procedure for presentations at Committee meetings by persons interested in proposed additions to the Procurement List. This information is currently contained in an internal memorandum. In part 51-3 on central nonprofit agencies (CNAs), a new provision has been added to the list of CNA responsibilities under the JWOD Act to permit them to perform other administrative functions reasonably related to the JWOD Program but not specifically mentioned in the list (§ 51-3.2(m)).

Several changes have been made in part 51-4 on nonprofit agency responsibilities. The responsibility of a nonprofit agency to maintain assessments of a direct labor individual's ability to engage in normal competitive employment has been clarified in § 51-4.3. Section 51-4.4 on subcontracting has been changed to encourage subcontracting to other

nonprofit agencies, as well as small businesses, and to provide additional guidance on the permissible limits of subcontracting portions of production processes for commodities on the Procurement List. Former § 51-4.5 on production of commodities has been deleted because the matter is addressed in one of the expanded provisions on suitability of an item for addition to the Procurement List, at § 51-2.4(c). Former § 51-4.6 has been renumbered to § 51-4.5 and changed to clarify the procedure for dealing with violations of nonprofit agency responsibilities and to state that removal from the JWOD Program is a possible penalty.

Part 51-5, Procurement Requirements and Procedures, which addresses requirements placed on Government contracting and ordering personnel by the JWOD Program, has been split into two parts reflecting the two areas it covers. The new part 51-5, Contracting Requirements, deals with general requirements, mandatory procurement, purchase exceptions, pricing, and related matters. A new part 51-6, Procurement Procedures, provides more order-specific guidance on matters such as orders and allocations, complaints and disputes, and specification changes for individual commodities and services.

Among the changes in the new part 51-5, the mandatory nature of JWOD procurements has been made clearer in § 51-5.2. Granting of purchase exceptions has been slightly restricted and the threshold for Committee approval of CNA action has been raised from \$2,500 to \$25,000, the current Government small purchase limitation (§ 51-5.4). Section 51-5.7 on payments for orders, which predates the Prompt Payment Act, has been brought into line with that Act. A new § 51-5.8 has been added to permit the Committee to investigate alleged violations of the JWOD Act or these regulations by Government entities.

The new part 51-6 clarifies guidance on the direct order and allocation processes, waivers of specifications, orders in excess of nonprofit agency capability, and deletions from the Procurement List. A new § 51-6.3 encourages the use of long-term ordering agreements. A new § 51-6.14 expands a former provision giving the Committee a role in quality complaints not resolved at a lower level to cover any disputes arising under the new part 51-6.

Creation of a new part 51-6 has required a renumbering of existing parts 51-6 through 51-9 as parts 51-7 through 51-10. The new part 51-7, Procedures for Environmental Analysis, is a complete rewrite of the existing part 51-6

following a model provided by the Council on Environmental Quality. It is expected to lessen the administrative burden in this area connected with Procurement List additions.

The only change in the text of the last three parts of the regulations appears at § 51-8.14(c), where the threshold for charging fees for requests under the Freedom of Information Act is lowered from \$20 to \$10, the threshold used by the General Services Administration, and the rationale for the threshold is stated in terms consistent with that Act.

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revisions basically update and clarify program policies and procedures and do not essentially change the impact of the regulations upon small entities.

#### Paperwork Reduction Act

Sections 51-4.2 and 51-4.3 contain information collection and record keeping requirements. Although these requirements are unchanged from those in the current Committee regulations, which have been approved by the Office of Management and Budget (OMB), the Committee will submit a copy of these sections to OMB for its review as required by the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Nonprofit agencies employing persons with severe disabilities throughout the United States may qualify to participate in the JWOD Program, which currently provides employment for nearly 19,000 Americans with severe disabilities. The Committee needs and uses the information submitted by these agencies and the records maintained by them to determine that they meet the regulatory requirements contained in the sections listed above. The annual public reporting and record keeping burden for this information collection by each nonprofit agency entering or participating in the JWOD Program is estimated at approximately six hours per agency, including the time for gathering the data needed and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection and record keeping requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

#### List of Subjects

##### 41 CFR Part 51-1

Government procurement, Handicapped.

##### 41 CFR Part 51-2

Organization and functions (Government agencies).

##### 41 CFR Part 51-3

Government procurement, Handicapped.

##### 41 CFR Part 51-4

Reporting and recordkeeping requirements.

##### 41 CFR Part 51-5

Government procurement, Handicapped.

##### 41 CFR Parts 51-6 and 51-7

Environmental impact statements.

##### 41 CFR Part 51-8

Freedom of information.

##### 41 CFR Part 51-9

Privacy.

##### 41 CFR Part 51-10

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

Chapter 51 of title 41 of the Code of Federal Regulations is proposed to be amended as follows:

1. Parts 51-1 through 51-5 are revised to read as follows:

#### PART 51-1—GENERAL

##### Sec.

51-1.1 Policy.

51-1.2 Mandatory source priorities.

51-1.3 Definitions.

Authority: 41 U.S.C. 46-48c.

##### § 51-1.1 Policy.

(a) It is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. The Committee for Purchase from the Blind and Other Severely Handicapped (hereinafter the Committee) was established by the Javits-Wagner-O'Day Act, Public Law 92-28, 85 Stat. 77 (1971), as amended, 42 U.S.C. 46-48c (hereinafter the JWOD Act). The Committee is responsible for implementation of a comprehensive program designed to enforce this policy.

(b) It is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. This support includes purchase of products and services published on the Committee's Procurement List through appropriate channels from nonprofit agencies employing persons who are blind or have other severe disabilities designated by the Committee; recommendations to the Committee of new commodities and services suitable for addition to the Procurement List; and cooperation with the Committee and the central nonprofit agencies in the provision of such data as the Committee may decide is necessary to determine suitability for addition to the Procurement List.

##### § 51-1.2 Mandatory source priorities.

(a) The JWOD Act mandates that commodities or services on the Procurement List required by Government entities be procured, as prescribed in this regulation, from a nonprofit agency employing persons who are blind or have other severe disabilities, at a price established by the Committee, if that commodity or service is available within the normal period required by that Government entity. Except as provided in paragraph (b) of this section, the JWOD Act has priority, under the provisions of 41 U.S.C. 48, over any other supplier of the Government's requirements for commodities and services on the Committee's Procurement List.

(b) Federal Prison Industries, Inc. has priority, under the provisions of 18 U.S.C. 4124, over nonprofit agencies employing persons who are blind or have other severe disabilities in furnishing commodities for sale to the Government. All or a portion of the Government's requirement for a commodity for which Federal Prison Industries, Inc. has exercised its priority may be added to the Procurement List. However, such addition is made with the understanding that procurement under the JWOD Act shall be limited to that portion of the Government's requirement for the commodity which is not available or not required to be procured from Federal Prison Industries, Inc.

(c) The JWOD Act requires the Committee to prescribe regulations providing that, in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies employing persons who are blind and nonprofit agencies employing persons who have other

severe disabilities, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind. In approving the addition of commodities, to the Procurement List, the Committee accords priority to nonprofit agencies for the blind. Nonprofit agencies for the blind and nonprofit agencies employing persons with severe disabilities have equal priority for services.

#### § 51-1.3 Definitions.

As used in this chapter:

*Agency and Federal agency* mean *Entity of the Government*, as defined herein.

*Blind* means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.

*Central nonprofit agency* means an agency organized under the laws of the United States or of any State, operated in the interest of the blind or persons with other severe disabilities, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the Procurement List among nonprofit agencies employing persons who are blind or have other severe disabilities, to provide information required by the Committee to implement the JWOD Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee.

*Committee* means the Committee for Purchase from the Blind and Other Severely Handicapped.

*Contracting activity* means any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for commodities or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of "contracting activity," "contracting office," and "contract administration office" contained in the Federal Acquisition Regulation, 48 CFR 2.101.

*Direct labor* means all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not

supervision, administration, inspection or shipping.

*Fiscal year* means the 12-month period beginning on October 1 of each year.

*Government and Entity of the Government* mean any entity of the legislative branch or the judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

*Interested person* means an individual or legal entity affected by a proposed addition of a commodity or service to the Procurement List or a deletion from it.

*JWOD Program* means the program authorized by the JWOD Act to increase employment and training opportunities for persons who are blind or have other severe disabilities through Government purchasing of commodities and services from nonprofit agencies employing these persons.

*Military resale commodities* means commodities on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.

*Nonprofit agency* (formerly workshop) means a nonprofit agency for the blind or a nonprofit agency employing persons with severe disabilities, as appropriate.

*Other severely handicapped and severely handicapped individuals* (hereinafter persons with severe disabilities) mean a person other than a blind person who has a severe physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time.

(1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.

(2) A person with a severe mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not

"other severely handicapped" within the meaning of the definition.

*Participating nonprofit agency* (formerly participating workshop) means any nonprofit agency which has been authorized by the Committee to furnish a commodity or service to the Government under the JWOD Act.

*Procurement List* means a list of commodities (including military resale commodities) and services which the Committee has determined to be suitable to be furnished to the Government by nonprofit agencies for the blind or nonprofit agencies employing persons with severe disabilities pursuant to the JWOD Act and these regulations.

*Qualified nonprofit agency for other severely handicapped* (hereinafter nonprofit agency employing persons with severe disabilities) (formerly workshop for other severely handicapped) means an agency organized under the laws of the United States or any State, operated in the interests of persons with severe disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs persons with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

*Qualified nonprofit agency for the blind* (hereinafter nonprofit agency for the blind) (formerly workshop for the blind) means an agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

*State* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of

the Northern Mariana Islands, and any territory remaining under the jurisdiction of the Trust Territory of the Pacific Islands.

#### **PART 51-2—COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED**

Sec.

- 51-2.1 Membership.
- 51-2.2 Powers and responsibilities.
- 51-2.3 Notice of proposed addition.
- 51-2.4 Determination of suitability.
- 51-2.5 Committee decision.
- 51-2.8 Reconsideration of Committee decision.
- 51-2.7 Fair market price.
- 51-2.8 Procurement list.
- 51-2.9 Oral presentations by interested persons at Committee meetings.

Authority: 41 U.S.C. 46-48c.

##### **§ 51-2.1 Membership.**

Under the JWOD Act, the Committee is composed of 15 members appointed by the President. There is one representative from each of the following departments or agencies of the Government: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Justice, the Department of Labor, the Department of Veterans Affairs, and the General Services Administration. Four members are private citizens: One who is conversant with the problems incident to the employment of blind individuals; one who is conversant with the problems incident to the employment of persons with other severe disabilities; one who represents blind individuals employed in qualified nonprofit agencies for the blind; and one who represents persons with severe disabilities (other than blindness) employed in qualified nonprofit agencies employing persons with severe disabilities.

##### **§ 51-2.2 Powers and responsibilities.**

The Committee is responsible for carrying out the following functions in support of its mission of providing employment and training opportunities for persons who are blind or have other severe disabilities and, whenever possible, preparing those individuals to engage in competitive employment:

- (a) Establish rules, regulations, and policies to assure effective implementation of the JWOD Act.
- (b) Determine which commodities and services procured by the Federal Government are suitable to be furnished by qualified nonprofit agencies employing persons who are blind or have other severe disabilities and add

those items to the Committee's Procurement List. Publish notices of addition to the Procurement List in the **Federal Register**. Disseminate information on Procurement List items to Federal agencies. Delete items no longer suitable to be furnished by nonprofit agencies.

(c) Determine fair market prices for items added to the Procurement List and revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.

(d) Monitor nonprofit agency compliance with Committee regulations and procedures.

(e) Inform Federal agencies about the JWOD Program and the statutory mandate that items on the Procurement List be purchased from qualified nonprofit agencies, and encourage and assist entities of the Federal Government to identify additional commodities and services that can be purchased from qualified nonprofit agencies. To the extent possible, monitor Federal agencies' compliance with JWOD requirements.

(f) Designate, set appropriate ceilings on fee paid to these central nonprofit agencies by nonprofit agencies selling items under the JWOD Program, and provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping State and private nonprofit agencies participate in the JWOD Program.

(g) Conduct a continuing study and evaluation of its activities under the Act for the purpose of assuring effective and efficient administration of the Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to:

(1) The employment of the blind or individuals with other severe disabilities.

(2) The development and adaptation of production methods which would enable a greater utilization of these individuals.

(h) Provide technical assistance to the central nonprofit agencies and the nonprofit agencies to contribute to the successful implementation of the JWOD Act.

(i) Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing commodities.

##### **§ 51-2.3 Notice of proposed addition.**

At least 30 days prior to the Committee's consideration of the addition of a commodity or service to

the Procurement List, the Committee publishes a notice in the **Federal Register** announcing the proposed addition and providing interested persons an opportunity to submit written data or comments on the proposed addition.

##### **§ 51-2.4 Determination of suitability.**

The Committee has established the following criteria, each of which must be satisfied, for determining if a commodity or service is suitable for addition to the Procurement List:

(a) *Employment potential.* The proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.

(b) *Nonprofit agency qualifications.* The nonprofit agency (or agencies) proposing to furnish the item must qualify as a nonprofit agency serving persons who are blind or have other severe disabilities, as set forth in part 51-4 of this chapter.

(c) *Capability.* The nonprofit agency (or agencies) desiring to furnish a commodity or service under the JWOD program must satisfy the Committee as to the extent of the labor operations to be performed and that it will have the capability to meet Government quality standards and delivery schedules by the time it assumes responsibility for supplying the Government.

(d) *Fair market price.* The commodity or service will be provided at a fair market price under the procedures established by § 51-2.7.

(e) *Level of impact on the current or most recent contractor for the commodity or service.* In deciding whether or not a proposed addition to the Procurement List would have a severe adverse impact on the current or most recent contractor for the specific commodity or service, the Committee gives particular attention to:

(1) The possible impact on the contractor's sales. In addition, the Committee considers the effects of previous Committee actions.

(2) Whether that contractor has been a continuous supplier to the Government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(3) Any substantive comments received as the result of the notice of the proposed addition in the **Federal Register**.

##### **§ 51-2.5 Committee decision.**

The Committee considers the particular facts and circumstances in each case in determining if a commodity

or service is suitable for addition to the Procurement List. When the Committee determines that a proposed addition to the Procurement List would have a severe adverse impact on a particular company, it takes this fact into consideration in deciding whether or not the commodity or service in question, or a portion of the Government requirement for it, should be added to the Procurement List. If the Committee decides to add a commodity or service to the Procurement List, that decision is announced in the **Federal Register** with a notice that includes information on the effective date of the addition.

**§ 51-2.6 Reconsideration of Committee decision.**

The Committee may reconsider its decision to add items to the Procurement List if it receives pertinent information which was not before it when it initially made the decision. Unless otherwise provided by the Committee, requests for reconsideration from interested persons must be received by the Committee within 60 days following the effective date of the addition in question. A request for reconsideration must include the specific facts believed by the interested person to justify a decision by the Committee to modify or reverse its earlier action.

**§ 51-2.7 Fair market price.**

The Committee is responsible for determining the fair market prices, and changes thereto, for commodities or services on the Procurement List. The Committee considers recommendations from the contracting activities and the central nonprofit agency concerned. Recommendations for fair market prices or changes thereto shall be submitted by the nonprofit agencies to the central nonprofit agency representing the nonprofit agency. Contracting activities should submit recommendations directly to the Committee. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the Committee along with the detailed justification necessary to support the recommended price.

**§ 51-2.8 Procurement list.**

(a) The Committee maintains a Procurement List which includes the commodities and services which shall be procured by Government departments and agencies under the JWOD Act from the nonprofit agency(ies) designated by the Committee. Copies of the Procurement List, together with information on procurement requirements and

procedures, are available to contracting activities upon request.

(b) For commodities, including military resale commodities, the Procurement List identifies the name and national stock number or item designation for each commodity, and where appropriate, any limitation on the portion of the commodity which must be procured under the JWOD Act.

(c) For services, the Procurement List identifies the type of service to be furnished, the Government department or agency responsible for procuring the service, and, where appropriate, the activity or item to be serviced.

(d) Additions to and deletions from the Procurement List are published in the **Federal Register** as they are approved by the Committee.

**§ 51-2.9 Oral presentations by interested persons at Committee meetings.**

(a) Upon written request from an interested person, that person may, at the discretion of the Committee Chair, be permitted to appear before the Committee to present views orally. Generally, only those persons who have raised significant issues which, if valid, could influence the Committee's decision in the matter under consideration will be permitted to appear.

(b) When the Chair has approved the appearance before the Committee of an interested person who has made a written request:

(1) The name of the spokesperson and the names of any other persons planning to appear shall be provided to the Committee staff by telephone at least three working days before the meeting.

(2) In the absence of prior authorization by the Chair, only one person representing a particular agency or organization will be permitted to speak.

(3) Oral statements to the Committee and written material provided in conjunction with the oral statements shall be limited to issues addressed in written comments which have previously been submitted to the Committee as the result of notice of proposed rulemaking in the **Federal Register**.

(4) Written material to be provided in conjunction with the oral presentation and an outline of the presentation shall be submitted to the Committee staff at least three working days before the meeting.

(c) The Committee may also invite other interested persons to make oral presentations at Committee meetings when it determines that these persons can provide information which will assist the Committee in making a

decision on a proposed addition to the Procurement List. Terms of appearance of such persons shall be determined by the Chair.

**PART 51-3—CENTRAL NONPROFIT AGENCIES**

Sec.

51-3.1 General.

51-3.2 Responsibilities under the JWOD Program.

51-3.3 Assignment of commodity or service.

51-3.4 Distribution of orders.

51-3.5 Fees.

51-3.6 Reports to central nonprofit agencies.

Authority: 41 U.S.C. 46-48c.

**§ 51-3.1 General.**

Under the provisions of section 2(c) of the JWOD Act, the following are currently designated central nonprofit agencies: (a) To represent nonprofit agencies for the blind: National Industries for the Blind.

(b) To represent nonprofit agencies employing persons with other severe disabilities: NISH.

**§ 51-3.2 Responsibilities under the JWOD Program.**

Each central nonprofit agency shall: (a) Represent its participating nonprofit agencies in dealing with the Committee under the JWOD Act.

(b) Evaluate the qualifications and capabilities of its nonprofit agencies and provide the Committee with pertinent data concerning its nonprofit agencies, their status as qualified nonprofit agencies, their manufacturing or service capabilities, and other information concerning them required by the Committee.

(c) Obtain from Federal contracting activities such procurement information as is required by the Committee to determine the suitability of a commodity or service being recommended to the Committee for addition to the Procurement List.

(d) Recommend to the Committee, with appropriate justification including recommended prices, suitable commodities or services for procurement from its nonprofit agencies.

(e) Distribute within the policy guidelines of the Committee (by direct allocation, subcontract, or any other means) orders from Government activities among its nonprofit agencies.

(f) Maintain the necessary records and data on its nonprofit agencies to enable it to allocate orders equitably.

(g) Oversee and assist its nonprofit agencies to insure contract compliance in furnishing a commodity or a service.

(h) As market conditions change, recommend price changes with

appropriate justification for assigned commodities or services on the Procurement List.

(i) Monitor and inspect the activities of its nonprofit agencies to ensure compliance with the JWOD Act and appropriate regulations.

(j) When authorized by the Committee, enter into contracts with Federal contracting activities for the furnishing of commodities or services provided by its nonprofit agencies.

(k) At the time designated by the Committee, submit a completed, original copy of the appropriate Initial Certification (Committee Form 401 or 402) for the nonprofit agency concerned. This requirement does not apply to a nonprofit agency that is already authorized to furnish a commodity or service under the JWOD Act.

(l) Review and forward to the Committee by December 15 of each year a completed, original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.

(m) Perform other JWOD administrative functions, including activities to increase Government and public awareness of the JWOD Act subject to the oversight of the Committee.

#### § 51-3.3 Assignment of commodity or service.

(a) The assignment of a commodity or service to a central nonprofit agency for the purpose of evaluating its potential for possible future addition to the Procurement List shall be as agreed between the two central nonprofit agencies, except for commodities proposed by NISH when the National Industries for the Blind has exercised its priority. The Committee shall initially assign these commodities to the National Industries for the Blind.

(b) NISH, at the time it requests a decision from the National Industries for the Blind on the waiver or exercise of the blind priority for a commodity, shall provide to the National Industries for the Blind the procurement information necessary for the National Industries for the Blind to make a determination on the waiver or exercise of its priority. The National Industries for the Blind shall normally provide its decision within 30 days, but not later than 60 days after receipt of the essential procurement information it requires. The time for this decision may be extended beyond 60 days by mutual agreement between the two central nonprofit agencies. Disagreements on extensions

shall be referred to the Committee for resolution.

(c) The National Industries for the Blind shall notify NISH and the Committee of its decision to exercise the blind priority and shall complete the essential steps to place the commodity on the Procurement List within nine months after the Committee is notified. The Committee may extend the nine-month period when the National Industries for the Blind has been delayed by conditions beyond its control. Upon expiration of the assignment period, the Committee shall reassign the commodity to NISH for development by its nonprofit agencies.

(d) The appropriate central nonprofit agency shall obtain a decision from the Federal Prison Industries on the waiver or exercise of its priority for commodities. Procurement information required by the Federal Prison Industries to make a determination on the waiver or exercise of its priority shall be provided by the central nonprofit agency at the time it requests the waiver. The Federal Prison Industries shall provide its decision to the central nonprofit agency within 30 days, but not later than 60 days after it receives the essential procurement information. The period for the decision may be extended beyond 60 days by mutual agreement between the Federal Prison Industries and the central nonprofit agency. Disagreements on extensions shall be referred by the central nonprofit agency to the Committee for resolution with the Federal Prison Industries.

(e) The central nonprofit agency shall provide to the Committee written documentation from the Federal Prison Industries indicating its decision on the waiver or exercise of its priority at the time it requests the addition of the commodity to the Procurement List. NISH shall also include the written decision from the National Industries for the Blind indicating its waiver of the blind priority.

#### § 51-3.4 Distribution of orders.

Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has approved to furnish the specific commodity or service. When the Committee has approved two or more nonprofit agencies to furnish a specific commodity or service, the central nonprofit agency shall distribute orders among those nonprofit agencies in a fair and equitable manner.

#### § 51-3.5 Fees.

The fees the central nonprofit agency shall charge nonprofit agencies for

facilitating participation by their nonprofit agencies under the JWOD Act shall not exceed the fee limit approved by the Committee.

#### § 51-3.6 Reports to central nonprofit agencies.

Any information, other than that contained in the Annual Certification required by § 51-4.3(a) of this chapter, which a central nonprofit agency requires its nonprofit agencies to submit on an annual basis, shall be requested separately from the Annual Certification. If the information is being sought in response to a request by the Committee, nonprofit agencies shall be advised of that fact and the central nonprofit agency shall, prior to distribution, provide to the Committee a copy of each form which it plans to use to obtain such information from its nonprofit agencies.

### PART 51-4—NONPROFIT AGENCIES

#### Sec.

- 51-4.1 General.
- 51-4.2 Initial qualification.
- 51-4.3 Maintaining qualification.
- 51-4.4 Subcontracting.
- 51-4.5 Violations.

Authority: 41 U.S.C. 48-48c.

#### § 51-4.1 General.

To participate in the program established by the JWOD Act, a nonprofit agency shall be represented by the central nonprofit agency assigned by the Committee on the basis of the nonprofit agency's articles of incorporation and bylaws.

#### § 51-4.2 Initial qualification.

(a) To qualify for participation under the JWOD Act:

(1) Except as provided in paragraph (a)(2) of this section, a nonprofit agency shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation or chief executive:

(i) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws certified by an officer of the corporation.

(iii) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual, one of the following shall be submitted:

(A) A certified true copy of the State statute under which the nonprofit

agency was incorporated which includes wording to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(B) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation, to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(2) A State-owned or State-operated nonprofit agency for persons who are blind or have other severe disabilities, or a nonprofit agency established or authorized by a State statute other than the State corporation laws and not privately incorporated, shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the wholly-owned State corporation or an official of the agency that directs the operations of the nonprofit agency, as applicable:

(i) A certified true copy of the State statute establishing or authorizing the establishment of nonprofit agency(ies) for persons who are blind or have other severe disabilities.

(ii) In the case of a wholly-owned State corporation, a certified true copy of the corporation bylaws; and, in the case of a State or local government agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the nonprofit agency, or other similar documents.

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status under the JWOD Act.

(c) A nonprofit agency shall submit two completed copies of the appropriate Initial Certification (Committee Form 401 or 402) to its central nonprofit agency at the time designated by the Committee. This requirement does not apply if a nonprofit agency is already authorized to furnish a commodity or service under the JWOD Act.

**§ 51-4.3 Maintaining qualification.**

(a) To maintain its qualification under the JWOD Act, each nonprofit agency authorized to furnish a commodity or a service shall continue to comply with the requirements of a "nonprofit agency for other severely handicapped" or a "nonprofit agency for the blind" as defined in § 51-1.3 of this chapter. In addition, each such nonprofit agency must submit to its central nonprofit agency by November 15 of each year,

two completed copies of the appropriate Annual Certification covering the fiscal year ending the preceding September 30.

(b) In addition to paragraph (a) of this section, each nonprofit agency participating under the JWOD Act shall:

(1) Furnish commodities or services in strict accordance with Government orders.

(2) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor.

(3) Comply with directives or requests issued by the Committee in furtherance of the objectives of the JWOD Act or its implementing regulations.

(4) Make its records available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

(5) Maintain records of direct labor hours performed in the nonprofit agency by each worker.

(6) Maintain a file on each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation.

(7) Maintain in the file for each blind individual performing direct labor annual reviews of ability to engage in normal competitive employment. These reviews must be signed by an individual qualified by training and/or experience to make this determination.

(8) Maintain an ongoing placement program operated by or for the nonprofit agency to include liaison with appropriate community services such as the State employment service, employer groups and others. Those individuals determined capable and desirous of normal competitive employment shall be assisted in obtaining such employment.

(9) Establish written procedures to encourage, where appropriate, filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities.

(10) Upon receipt of payment by the Government for commodities or services furnished under the JWOD Act, pay to the central nonprofit agency the fee not to exceed the limit authorized by the Committee under the authority of § 51-3.5 of this chapter.

(c) Each nonprofit agency employing persons with severe disabilities participating under the JWOD Act shall, in addition to the requirements of paragraphs (a) and (b) of this section, maintain in each individual with a severe disability's file:

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, as appropriate, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability.

(2) Reports which state whether that individual is capable of engaging in normal competitive employment. These reports shall be signed by a person or persons qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities and shall normally consist of preadmission evaluations and reevaluations prepared at least annually. The file on individuals who have been in the nonprofit agency for less than two years shall contain the preadmission report and, where appropriate, the next annual reevaluation. The file on individuals who have been in the nonprofit agency for two or more years shall contain, as a minimum, the reports of the two most recent annual reevaluations.

(d) The information collection requirements of § 51-4.2 and § 51-4.3 and the record keeping requirements of § 51-4.3 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The information collection requirements have been assigned the following OMB control numbers:

Committee form	OMB control No.
Committee form 401 .....	3037-0004
Committee form 402 .....	3037-0003
Committee form 403 .....	3037-0001
Committee form 404 .....	3037-0002

The record keeping requirements have been assigned OMB control number 3037-0005.

**§ 51-4.4 Subcontracting.**

(a) Nonprofit agencies shall seek broad competition in the purchase of materials and components used in the commodities and services furnished to the Government under the JWOD Act. Nonprofit agencies shall inform the Committee, through their central nonprofit agency, before entering into multiyear contracts for materials or components used in the commodities and services furnished to the Government under the JWOD Act.

(b) Each nonprofit agency shall accomplish the maximum amount of subcontracting with other nonprofit agencies and small business concerns that the nonprofit agency finds to be

consistent both with efficient performance in furnishing commodities or services under the JWOD Act and maximizing employment for persons who are blind or have other severe disabilities.

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities.

(d) A nonprofit agency may not subcontract the entire production process for all or a portion of an order without the Committee's prior approval.

#### § 51-4.5 Violations.

(a) Any alleged violations of these regulations by a nonprofit agency shall be investigated by the appropriate central nonprofit agency which shall notify the nonprofit agency concerned and afford it an opportunity to submit a statement of facts and evidence. The central nonprofit agency shall report its findings to the Committee, together with its recommendation. In reviewing the case, the Committee may request the submission of additional evidence or may conduct its own investigation of the matter. Pending a decision by the Committee, the central nonprofit agency concerned may be directed by the Committee to temporarily suspend allocations to the nonprofit agency.

(b) If a nonprofit agency fails to correct its violations of these regulations, the Committee, after affording the nonprofit agency an opportunity to address the Committee on the matter, may terminate the nonprofit agency's eligibility to participate in the JWOD Program.

### PART 51-5—CONTRACTING REQUIREMENTS

Sec.

- 51-5.1 General.
- 51-5.2 Mandatory procurement.
- 51-5.3 Scope of requirement.
- 51-5.4 Purchase exceptions.
- 51-5.5 Prices.
- 51-5.6 Shipping and packing.
- 51-5.7 Payments.
- 51-5.8 Violations.

Authority: 41 U.S.C. 46-48c.

#### § 51-5.1 General.

(a) Contracting activities are encouraged to assist the Committee and the central nonprofit agencies in identifying suitable commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities so that the Committee can attain its objective of increasing employment and

training opportunities for individuals who are blind or have other severe disabilities. For items which appear to be suitable to be furnished by nonprofit agencies, the contracting activity should refer the candidate commodities and services to the Committee or a central nonprofit agency.

(b) Contracting activities shall provide the Committee and designated central nonprofit agencies with information needed to enable the Committee to determine whether a commodity or service is suitable to be furnished by a nonprofit agency. For commodities, information such as the latest solicitation and amendments, bid abstracts, procurement history, estimated annual usage quantities, and anticipated date of next solicitation issuance and opening may be needed. For services, similar information including the statement of work and applicable wage determination may be required. In order to assist in evaluating the suitability of an Office of Management and Budget Circular No. A-76 conversion, contracting activities should provide a copy of the draft statement of work and applicable wage determination to the central nonprofit agency upon its request.

#### § 51-5.2 Mandatory procurement.

(a) Nonprofit agencies designated by the Committee are mandatory sources of supply for all Federal entities for commodities and services listed on the Procurement List, as provided in § 51-1.2 of this chapter.

(b) Purchases by Federal agencies shall be accomplished from sources listed in the Procurement List unless exception is authorized by the Committee.

(c) The Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) are responsible for buying broad categories of common commodities from a central nonprofit agency or nonprofit agency(ies) and serve as the distribution agents thereof. Unless otherwise provided by the Committee, when a commodity is identified on the Procurement List as being available from DLA, GSA, or VA, Federal agencies shall order, and shall require other persons providing such commodities to them by contract to order, those commodities from the appropriate contracting agency in accordance with the requisitioning procedures of their agency.

(d) The Procurement List also identifies other Federal agencies with responsibility for purchasing commodities for contracting activities in

their own agencies and, in some cases, contracting activities in other agencies and serving as the distribution agent thereof. In such cases, these contracting activities shall order, and shall require other persons providing such commodities to them by contract to order, the commodities from the appropriate contracting agency in accordance with the requisitioning procedures of their agency(ies).

(e) Commodities not available through paragraphs (c) or (d) of this section shall be ordered from the designated central nonprofit agency or nonprofit agency(ies).

(f) Procedures for obtaining military resale commodities are contained in § 51-6.4 of this chapter.

#### § 51-5.3 Scope of requirement.

(a) When a commodity is included on the Procurement List, only the National Stock Number or item designation listed is covered by the mandatory requirement. In some instances, only a portion of the Government requirement for a National Stock Number or item designation is specified by the Procurement List. Where geographic areas, quantities, percentages or specific supply locations for a commodity are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the commodity indicated by the Procurement List.

(b) For services, where an agency and location or geographic area are listed on the Procurement List, only the service for the location or geographic area listed must be procured from the nonprofit agency. Where no location or geographic area is indicated by the Procurement List, it is mandatory that the total Government requirement for that service be procured from a nonprofit agency.

#### § 51-5.4 Purchase exceptions.

(a) A central nonprofit agency will normally grant a purchase exception for a contracting activity to procure from commercial sources commodities or services on the Procurement List when both of the following conditions are met:

(1) The central nonprofit agency or its nonprofit agency(ies) cannot furnish a commodity or service within the period specified, and

(2) The commodity or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).

(b) The central nonprofit agency may grant a purchase exception when the quantity involved is not sufficient to be

furnished economically by the nonprofit agency(ies).

(c) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (a) and (b) of this section.

(d) The central nonprofit agency shall obtain approval of the Committee before granting a purchase exception when the value of the procurement is \$25,000 or more.

(e) When the central nonprofit agency grants a purchase exception under the above conditions, it shall do so promptly and shall specify the quantities and delivery period covered by the exception.

(f) When a purchase exception is granted under paragraph (a) of this section:

(1) Contracting activities shall initiate purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency with, in cases of procurements of \$25,000 or more, the concurrence of the Committee.

(2) Contracting activities shall furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated bid abstract upon awarding of the commercial contract.

(g) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the contracting activity.

#### §51-5.5 Prices.

(a) The prices for items on the Procurement List are fair market prices established by the Committee.

(b) Prices for commodities, except for military resale commodities, are for delivery aboard the vehicle of the initial carrier at point of production (f.o.b. origin), and include applicable packaging, packing, and marking.

(c) Price changes for commodities and services shall usually apply to orders received by the nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the contracting activity, the Committee may make price changes applicable to orders received by the nonprofit agency prior to the effective date of the change.

(d) To assist the Committee in revising the fair market prices for services on the Procurement List, upon request from the central nonprofit agency, the contracting activity should take the following actions:

(1) Submit to the Department of Labor in a timely fashion a request for wage determination rate.

(2) Provide a copy of the new wage determination rate or the Department of Labor document stating that the wage determination rate is unchanged and a completed Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice," to the central nonprofit agency at least 90 days before the beginning of the new service period.

(3) Provide to the central nonprofit agency at least 90 days before the beginning of the new service period a copy of the statement of work applicable to the new service period.

(e) If a contracting activity desires packing, packaging, or marking of products other than the standard pack or as provided in the Procurement List, the difference in cost thereof, if any, shall be added as a separate item on the purchase order.

#### §51-5.6 Shipping and packing.

For commodities, except for military resale commodities, delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is the date shipment is released to and accepted by the initial carrier. Method of transportation to destination shall normally be by Government bills of lading. However, for small shipments, the contracting activity may designate another method of transportation on its order. When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished, but they shall be supplied promptly. Failure by a contracting activity to furnish bills of lading promptly, or to designate a method of transportation, may result in an excusable cause for delay in delivery. When the nonprofit agency pays for transportation to destination, these costs shall be included as a separate item on the nonprofit agency's invoice and the nonprofit agency shall be reimbursed by the contracting activity for these costs.

#### § 51-5.7 Payments.

Payments for products or services of persons who are blind or have other severe disabilities shall be made within 30 days after shipment or receipt of a proper invoice or voucher.

#### § 51-5.8 Violations.

Any alleged violations of the JWOD Act or these regulations by entities of the Government shall be investigated by the Committee, which shall notify the entity and afford it an opportunity to submit a statement.

### PARTS 51-7—51-10 [REDESIGNATED FROM PARTS 51-6—51-9]

2. Parts 51-6 through 51-9 are redesignated as parts 51-7 through 51-10 and the cross references revised accordingly.

3. A new part 51-6 is added to read as follows:

#### PART 51-6—PROCUREMENT PROCEDURES

##### Sec.

- 51-6.1 Direct order process.
- 51-6.2 Allocation process.
- 51-6.3 Long-Term Ordering Agreements.
- 51-6.4 Military resale commodities.
- 51-6.5 Adjustment and cancellation of orders.
- 51-6.6 Request for waiver of specification requirement.
- 51-6.7 Orders in excess of nonprofit agency capability.
- 51-6.8 Deletion of items from the Procurement List.
- 51-6.9 Correspondence and inquiries.
- 51-6.10 Quality of merchandise.
- 51-6.11 Quality complaints.
- 51-6.12 Specification changes and similar actions.
- 51-6.13 Replacement commodities.
- 51-6.14 Disputes.

Authority: 41 U.S.C. 46-48c.

#### § 51-6.1 Direct order process.

(a) Once a commodity or service is added to the Procurement List, the central nonprofit agency may authorize the contracting activity to issue orders directly to a nonprofit agency without requesting an allocation for each order. This procedure is known as the direct order process.

(b) In these cases, the central nonprofit agency shall specify the normal leadtime required for orders transmitted directly to the nonprofit agencies. This method shall be used whenever possible since it eliminates double handling and decreases the time required for processing orders.

(c) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(d) The central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agencies in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or the individual nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date

is not feasible, the contracting activity shall:

(1) Notify the central nonprofit agency and the individual nonprofit agency(ies) as appropriate.

(2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in 51-5.4 of this chapter.

(e) The contracting activity shall promptly provide to the central nonprofit agency concerned a copy of all orders issued to nonprofit agencies.

(f) The written direct order authorization remains valid until it is revoked by the central nonprofit agency.

#### § 51-6.2 Allocation process.

(a) In those cases where a direct order authorization has not been issued as described in § 51-6.1, the contracting activity shall submit written requests for allocation to the appropriate central nonprofit agency indicated by the Procurement List at the address listed below:

Agency	Agency symbol
National Industries for the Blind, 1901 North Beauregard Street, Suite 200, Alexandria, Virginia 22311-1727.	IB
NISH, 2235 Cedar Lane, Vienna, Virginia 22182-5200.	SH

(b) Requests for allocations shall contain, as a minimum:

(1) For commodities. Name, stock number, latest specification, quantity, unit price, and place and time of delivery.

(2) For services. Type and location of service required, latest specification, work to be performed, estimated volume, and time for completion.

(c) Contracting activities shall request allocations in sufficient time for the central nonprofit agency to reply, for the order(s) to be placed, and for the nonprofit agencies to furnish the commodity or service (see paragraph (i) of this section).

(d) When a commodity on the Procurement List also appears on the Federal Prison Industries' "Schedule of Products," the contracting activity shall obtain clearance from the Federal Prison Industries prior to requesting an allocation or placing an order directly to the nonprofit agency(ies).

(e) The central nonprofit agency shall make allocations to the appropriate nonprofit agency(ies) upon receipt of a request from the contracting activity and instruct that the orders be forwarded to the central nonprofit agency or direct to the nonprofit agency(ies) with a copy

provided promptly to the central nonprofit agency.

(f) Central nonprofit agencies shall reply promptly to requests for allocation. When a request for allocation provides a delivery schedule (based on established lead times and time required for processing the allocation request) which cannot be met, the central nonprofit agency shall request a revision, which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(g) An allocation is not an obligation to supply a commodity or service, or an obligation for the contracting activity to issue an order. Nonprofit agencies are not authorized to commence production until receipt of an order.

(h) Upon receipt of an allocation, the contracting activity shall promptly submit an order to the appropriate central nonprofit agency or designated nonprofit agency(ies). Where this cannot be done promptly, the contracting activity shall advise the central nonprofit agency and the nonprofit agency(ies) immediately.

(i) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(j) The central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agency(ies) in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

(1) Notify the central nonprofit agency and nonprofit agency(ies) as appropriate.

(2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(k) In those instances where the central nonprofit agency is the prime contractor rather than the nonprofit agency, the central nonprofit agency will designate the nonprofit agency(ies) authorized by the Committee to furnish definite quantities of commodities or specific services upon receipt of an order from the contracting activity.

#### § 51-6.3 Long-term ordering agreements.

Contracting activities are encouraged to investigate long-term ordering agreements for commodities listed on the Procurement List to level off demand, thereby helping ensure stability of employment and development of job skills for persons who are blind or have other severe disabilities.

#### § 51-6.4 Military resale commodities.

(a) Purchase procedures for ordering military resale commodities are contained in instructions issued by the designated central nonprofit agency and are available upon request from that agency. Military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies (authorized resale outlets) shall request the central nonprofit agency to designate the nonprofit agency to which orders will be forwarded.

(b) Authorized resale outlets shall stock military resale commodities in as broad a range as is practicable. Authorized resale outlets may stock items procured from commercial sources which are comparable to a military resale commodity, provided the military resale commodity is also stocked, except that in military commissary stores military resale commodities in the 900-series normally shall be stocked exclusively. The stocking of commercial items in military commissary stores which are comparable to 900-series military resale commodities shall be restricted to those individual items, on a store-by-store basis, for which there is a significant customer demand.

(c) The Defense Commissary Agency shall, after consultation with the Committee:

(1) Establish mandatory lists of military resale commodities to be stocked in commissary stores.

(2) Require the stocking in commissary stores of military resale commodities in both the 500-, 800- and 900-series in as broad a range as is practicable.

(3) Issue guidance to commissary store personnel to take those actions required to achieve the maximum sales potential of military resale commodities.

(4) Establish policies and procedures which reserve at a level not lower than its military commissary headquarters the authority to grant exceptions to the exclusive stocking of 900-series military resale commodities.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale commodities in commissary stores, including

exceptions authorizing the stocking of commercial items in competition with 900-series military resale commodities.

(e) The prices of military resale commodities include delivery to destination or, in the case of destinations overseas, to designated depots at ports of embarkation. Zone pricing is used for delivery to Alaska, Hawaii and Puerto Rico.

**§ 51-6.5 Adjustment and cancellation of orders.**

When the central nonprofit agency or an individual nonprofit agency fails to comply with the terms of a Government order, the contracting activity shall make every effort to negotiate an adjustment before taking action to cancel the order. When a Government order is canceled for failure to comply with its terms, the central nonprofit agency shall be notified, and, if practicable, requested to reallocate the order. The central nonprofit agency shall notify the Committee of any cancellation of an order and the reasons for that cancellation.

**§ 51-6.6 Request for waiver of specification requirement.**

(a) Nonprofit agencies and central nonprofit agencies are encouraged to recommend changes to specification requirements or request waivers where there are opportunities to provide equal or improved products at a lower cost to the Government.

(b) A nonprofit agency shall not request a waiver of a specification requirement except when it is not possible to obtain the material meeting the specification or when other requirements contained in the specification cannot be met.

(c) Requests for waiver of specification shall be transmitted by the nonprofit agency to its central nonprofit agency.

(d) The central nonprofit agency shall review the request and the specification to determine if the request is valid and shall submit to the contracting activity only those requests which it has determined are necessary to enable the nonprofit agency to furnish the item.

(e) The central nonprofit agency request for waiver shall be transmitted in writing to the contracting activity. In addition, a copy of the request shall be transmitted to the Committee, annotated to include a statement concerning the impact on the cost of producing the item if the waiver is approved.

**§ 51-6.7 Orders in excess of nonprofit agency capability.**

(a) Nonprofit agencies are expected to furnish commodities on the Procurement List within the timeframes specified by

the Government. The nonprofit agency must have the necessary production facilities to meet normal fluctuations in demand.

(b) Nonprofit agencies shall take those actions necessary to ensure that they can ship commodities within the time frames specified by the Government. In instances where the nonprofit agency determines that it cannot ship the commodity in the quantities specified by the required shipping date, it shall notify the central nonprofit agency and the contracting activity. The central nonprofit agency shall request a revision of the shipping schedule which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in 51-5.4 of this chapter.

**§ 51-6.8 Deletion of items from the Procurement List.**

(a) When a central nonprofit agency decides to request that the Committee delete a commodity or service from the Procurement List, it shall notify the Committee staff immediately. Before reaching a decision to request a deletion of an item from the Procurement List, the central nonprofit agency shall determine that none of its nonprofit agencies is capable and desirous of furnishing the commodity or service involved.

(b) Except in cases where the Government is no longer procuring the item in question, the Committee shall, prior to deleting an item from the Procurement List, determine that none of the nonprofit agencies of the other central nonprofit agency is desirous and capable of furnishing the commodity or service involved.

(c) Nonprofit agencies will normally be required to complete production of any orders for commodities on hand regardless of the decision to delete the item. Nonprofit agencies shall obtain concurrence of the contracting activity and the Committee prior to returning a purchase order to the contracting activity.

(d) For services, a nonprofit agency shall notify the contracting activity of its intent to discontinue performance of the service 90 days in advance of the termination date to enable the contracting activity to assure continuity of the service after the nonprofit agency's discontinuance.

**§ 51-6.9 Correspondence and inquiries.**

Routine contracting activity correspondence or inquiries concerning deliveries of commodities being shipped from or performance of services by nonprofit agencies employing persons

who are blind or have other severe disabilities shall be with the nonprofit agency involved. Major problems shall be referred to the appropriate central nonprofit agency. In those instances where the problem cannot be resolved by the central nonprofit agency and the contracting activity involved, the contracting activity or central nonprofit agency shall notify the Committee of the problem so that action can be taken by the Committee to resolve it.

**§ 51-6.10 Quality of merchandise.**

(a) Commodities furnished under Government specification by nonprofit agencies employing persons who are blind or have other severe disabilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, commodities furnished shall be of a quality equal to or higher than similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities shall be performed in accordance with Government specifications and standards. Where no Government specifications and standards exist, the services shall be performed in accordance with commercial practices.

**§ 51-6.11 Quality complaints.**

(a) When the quality of a commodity received is not considered satisfactory by the using activity, the activity shall take the following actions as appropriate:

(1) For commodities received from Defense Logistics Agency supply centers, General Services Administration supply distribution facilities, Department of Veterans Affairs distribution division or other central stockage depots, or specifically authorized supply source, notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

(2) For commodities received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

(b) When the quality of a service is not considered satisfactory by the contracting activity, it shall address

complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

**§ 51-6.12 Specification changes and similar actions.**

(a) Specifications or other descriptions for commodities on the Procurement List may undergo a series of changes to keep current with industry changes and agency needs. Since it is not feasible to show the latest revision as of the publication date, only the basic specification or description is referenced in the Procurement List. Contracting activities shall notify the nonprofit agency and the central nonprofit agency concerned of any change to the applicable specification or description.

(b) When a Government entity is changing the specification or description of a commodity on the Procurement List, including a change that involves the assignment of a new national stock number or item designation, the office assigned responsibility for the action shall obtain the comments of the Committee and the central nonprofit agency concerned on the proposed change and shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to placing an order for a commodity covered by the new specification or description.

(c) Similarly for services, the contracting activity shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions will be required.

(d) When, in order to meet emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the nonprofit agency and the central nonprofit agency in writing of the reasons it cannot meet the 90-day notification requirement.

**§ 51-6.13 Replacement commodities.**

When a commodity on the Procurement List is replaced by another commodity which has not been previously procured, and a qualified nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules at a fair market price, the replacement commodity is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee. The commodity being replaced shall

continue to be included on the Procurement List until there is no longer a requirement for that commodity.

**§ 51-6.14 Disputes.**

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by this part 51-6 should be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

4. Newly redesignated part 51-7 is revised to read as follows:

**PART 51-7—PROCEDURES FOR ENVIRONMENTAL ANALYSIS**

Sec.

51-7.1 Purpose and scope.

51-7.2 Early involvement in private, State, and local activities requiring Federal approval.

51-7.3 Ensuring environmental documents are actually considered in agency determinations.

51-7.4 Typical classes of action.

51-7.5 Environmental information.

Authority: 42 U.S.C. 4321 et seq.

**§ 51-7.1 Purpose and scope.**

(a) *Purpose.* This part implements the National Environmental Policy Act of 1969 (NEPA) and provides for the implementation of those provisions identified in 40 CFR 1507.3(b) of the regulations issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500-1508) published pursuant to NEPA.

(b) *Scope.* This part applies to all actions of the Committee for Purchase from the Blind and Other Severely Handicapped which may affect environmental quality in the United States.

**§ 51-7.2 Early involvement in private, State, and local activities requiring Federal approval.**

(a) 40 CFR 1501.2(d) requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some sort of Federal approval. Pursuant to the JWOD Act (41 U.S.C. 46-48c), the Committee for Purchase from the Blind and Other Severely Handicapped makes the determination as to which qualified nonprofit agency serving persons who are blind or have other severe disabilities will furnish designated products and services to the Government.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions, the Committee staff shall

consult as required with other appropriate parties to initiate and coordinate the necessary environmental analysis. The Executive Director shall determine on the basis of information submitted by private agencies and other non-Federal entities or generated by the Committee whether the proposed action is one that normally does not require an environmental assessment or environmental impact statement (EIS) as set forth in § 51-7.4, or is one that requires an environmental assessment as set forth in 40 CFR 1501.4.

(c) To facilitate compliance with these requirements, private agencies and other non-Federal entities are expected to:

(1) Contact the Committee staff as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their request;

(2) Conduct any studies which are deemed necessary and appropriate by the Committee to determine the impact of the proposed action on the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;

(5) Notify the Committee as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so the Committee may coordinate all Federal environmental reviews; and

(6) Notify the Committee of all known parties potentially affected by or interested in the proposed action.

**§ 51-7.3 Ensuring environmental documents are actually considered in agency determinations.**

(a) 40 CFR 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, the Committee staff shall:

(1) Consider all relevant environmental documents in evaluating proposals for agency action;

(2) Ensure that all relevant environmental documents, comments and responses accompany the proposal through the agency review processes;

(3) Consider only those alternatives discussed in the relevant environmental documents when evaluating proposals for agency action; and

(4) Where an EIS has been prepared, consider the specific alternative analysis in the EIS when evaluating the proposal which is the subject of the EIS.

(b) For each of the Committee's actions authorized by the JWOD Act, the following list identifies the point at which the NEPA process begins, the point at which it ends, and the key agency official or office required to consider the relevant environmental documents as a part of their decision-making:

(1) Action: Request.

(2) Start of NEPA process: Upon receipt of request.

(3) Completion of NEPA process: When the deciding official reviews the proposal and makes a determination.

(4) Key official or office required to consider environmental document: When a positive determination is made under § 51-7.2(b), the applicant in conjunction with the Committee staff will prepare the necessary papers.

**§ 51-7.4 Typical classes of action.**

(a) 40 CFR 1507.3(b)(2) in conjunction with 40 CFR 1508.4 requires agencies to establish three typical classes of action

for similar treatment under NEPA. These typical classes of action are set forth below:

(1) Actions normally requiring EIS: None.

(2) Actions normally requiring assessments but not necessarily EISs: Requests for actions for which determinations under § 51-7.2(b) are found to be affirmative.

(3) Actions normally not requiring assessments or EISs: Request for actions by nonprofit agencies through the central nonprofit agencies to add a commodity or service to the Committee's Procurement List.

(b) The Committee shall independently determine, by referring to 40 CFR 1508.27, whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, but where the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

**§ 51-7.5 Environmental information.**

Interested parties may contact the Executive Director at (703) 557-1145 for information regarding the Committee's compliance with NEPA.

**PART 51-8—PUBLIC AVAILABILITY OF AGENCY MATERIALS**

5. The authority citation for newly redesignated part 51-8 continues to read as follows:

Authority: 5 U.S.C. 552.

6. Newly redesignated § 51-8.14 is amended by revising paragraph (c) to read as follows:

**§ 51-8.14. Fee waivers and reductions.**

\* \* \* \* \*

(c) Fees shall be waived in all circumstances where the amount of the fee is \$10 or less as the cost of collection would be greater than the fee.

Dated: June 17, 1991.

Beverly L. Milkman,  
Executive Director.

[FR Doc. 91-14830 Filed 6-27-91; 8:45 am]  
BILLING CODE 6020-33-M

# **federal register**

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Friday  
June 28, 1991

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## **Part III**

### **Department of the Interior**

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**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Parts 701, 780, 784, 816 and 817  
Surface Coal Mining and Reclamation  
Operations; Permanent Regulatory  
Program; Performance Standards;  
Permanent and Temporary  
Impoundments; Proposed Rule**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 816 and 817

RIN 1029-AB40

## Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

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

ACTION: Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend portions of its permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. The revisions are in response to a court action, and for clarification.

The proposed rule, which concerns the design, construction and inspection requirements that apply to impoundments, would: (1) Incorporate by reference the U.S. Department of Agriculture, Soil Conservation Service publications, Technical Release No. 60 and Practice Standard 378; (2) Require stability and margin of safety requirements to be compatible with Technical Release No. 60; and (3) Relocate several related definitions.

**DATES:** Written comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on August 27, 1991.

**Public hearings:** Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; in Denver, Colorado, and in Knoxville, Tennessee on August 22, 1991. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on July 29, 1991. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

**ADDRESSES:** Written comments: Hand-deliver to the OSM, Administrative Record, room 5131, 1100 L Street NW., Washington, DC; or mail to the OSM,

Administrative Record, room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240.

**Public hearings:** Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue SE., Knoxville, Tennessee. The addressees for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

**Request for public hearings:** Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

**FOR FURTHER INFORMATION CONTACT:** Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1502 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures.

II. Background.

III. Discussion of Proposed Rule.

IV. Procedural Matters.

**I. Public Comment Procedures***Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed above (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record for the final rule.

*Public Hearings*

OSM will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES"). The dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings held in those locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Wiles (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5 p.m. Eastern time

July 29, 1991. If no one has contacted Mr. Wiles to express interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

**II. Background**

The Surface Mining Control and Reclamation Act of 1977 (the Act, or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Environmental protection performance standards for permanent water impoundments constructed during surface mining activities appear in section 515(b)(8) of the Act, 30 U.S.C. 1265(b)(8); provisions governing the construction of siltation structures, a type of impoundment, appear in section 515(b)(10)(B), 30 U.S.C. 1265(b)(10)(B). Sections 516(b) (9) and (10) of the Act, 30 U.S.C. 1266(b) (9) and (10), impose similar requirements for water impoundments and siltation structures that are used for underground mining activities, but provide that the Secretary shall make such modifications in the requirements as are necessary to accommodate the distinct differences between surface and underground mining.

In regulating impoundments OSM must coordinate its requirements with two other Federal agencies, the U.S. Soil Conservation Service (SCS) and the Mine Safety and Health Administration (MSHA).

SCS is part of the Department of Agriculture and has authority under the Watershed Protection and Flood Prevention Act (Pub. L. 83-566 (16 U.S.C. 1006)). SCS is responsible for cooperating with other agencies in the planning and carrying out works of improvement for soil conservation, and other purposes.

MSHA is part of the Department of Labor and has authority under the Federal Mine Safety and Health Amendments Act of 1977 (91 Stat. 1290;

30 U.S.C. 801). MSHA is responsible for developing, promulgating, and enforcing safety and health standards aimed at preventing and reducing mine accidents and occupational diseases in the mining industry.

OSM's regulations governing the design, construction and inspection of impoundments call upon criteria established by SCS and MSHA. SMCRA at section 515(b)(8)(B) specifically references SCS's Public Law 83-566 as a performance requirement that must be met in the design and construction of permanent impoundments. Numerous OSM regulations governing impoundments currently include MSHA regulations by reference.

OSM has defined "impoundment" at 30 CFR 701.5 to be any holding structure containing water, sediment, slurry, or other liquid or semi-liquid. OSM rules regulate both temporary and permanent impoundments. Sediment ponds and siltation structures are by current OSM definition specific types of impoundments.

The permanent regulatory program for surface coal mining and reclamation operations was promulgated on March 13, 1979 (44 FR 15312). Requirements for sedimentation ponds and siltation structures at surface mining activities were established at 30 CFR 816.46 (44 FR 15400), while those for underground mining at 30 CFR 817.46 (44 FR 15426) to implement the provisions of section 515(b)(10)(B) of the Act.

Requirements for permanent and temporary impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 816.49 (44 FR 15401) and 30 CFR 817.49 (44 FR 15428), respectively to implement provisions of 515(b)(8) of the Act.

Permitting requirements for reclamation and operation plans for impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 780.25 (44 FR 15360) and 30 CFR 784.25 (44 FR 15368), respectively.

During revisions to the permanent regulatory program in 1983, OSM replaced most of the specific design criteria in § 816.46 (48 FR 44051) and § 816.49 (48 FR 44004) with performance standards, thereby providing regulatory authorities greater flexibility in the details of impoundment design. Furthermore, section 816.46 was renamed "Hydrologic balance: Siltation Structures," to be consistent with the wording of section 515(b)(10)(B)(ii) of the Act and to reflect rule changes which provided for the use of certain siltation structures other than sedimentation

ponds, such as chemical treatment facilities or mechanical structures that have a point-source discharge.

Upon issuance, the 1983 rulemaking for §§ 816.46 and 816.49 was challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. July 15, 1985) (*In Re: Permanent (II)*). The court remanded: (1) §§ 816.49(a)(3) and (a)(5)(i) on the basis that they included requirements for a static safety factor and for foundation investigation and laboratory testing of small sedimentation ponds without having included such requirements when the rule was proposed on June 21, 1982, as required by the Administrative Procedure Act; and (2) § 816.49 to the extent that they relied only on MSHA impoundment size classification standards when OSM had not justified reliance solely on such standards. Slip op. at 30-32 and 102-117. In addition, in response to plaintiff's challenge of the combination spillway requirement of § 816.49(a)(8), the Secretary of the Interior agreed to reexamine the issue and consider proposing a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. (*Id.* at 1538 and 1571-1572.)

On October 27, 1988 (53 FR 43584), OSM amended the permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. The 1988 rules incorporated design and performance requirements for impoundments and spillways that were based on MSHA criteria and SCS classification for class B and C structures. The 1988 rules also authorized the approval of sediment ponds that rely primarily on storage to control the runoff from the design precipitation event, as opposed to relying on both principal and emergency spillways.

30 CFR 816.49 of the 1988 rules on impoundments was challenged by environmental groups who incorrectly interpreted that the 1988 rules were based only on MSHA criteria. In its decision (*United States District Court for the District of Columbia, Civil Action No. 88-3345, August 30, 1990*), the Court noted the issue involved the interplay of two laws in addition to SMCRA. The laws are: (1) The Watershed Protection and Flood Prevention Act and rules issued under it by the U.S. SCS, including technical standards for the design and construction of impoundments found in Technical release (TR) 60 "Earth, Dams, and Reservoirs," and TR 378 "Ponds", and

(2) the Federal MSHA and rules issued under it by the MSHA. SMCRA has a mandate to ensure that impoundments are as safe as those constructed under the watershed and flood law.

The Court found that the SCS standards referred to in the preamble to § 816.49(a)(3)(i) are the SCS class B and C dams. Furthermore, the Court stated "Indeed, in the Secretary's view, he has provided greater protection in this rule than does SCS because he mandated the stricter design standard when an impoundment meets either SCS's qualitative standard for B and C dams or the MSHA's size standard, which covers more impoundments than does the SCS's looser size standard."

The Court did note that a plain reading of the preamble may result in some ambiguity. Given that some misunderstanding of the requirements for impoundments existed, OSM now wishes to clarify the issue for all water impoundment's design, construction, and performance. In this context alone, OSM is proposing to reference specifically both SCS class B and C impoundments and MSHA impoundments in all rules at 30 CFR 780.25 and 816.49 where impoundment-related criteria are found.

Section 780.25 contains permit application requirements for reclamation plans dealing with impoundments and it is essential for these requirements to be consistent with the performance requirements in § 816.49.

### III. Discussion of Proposed Rule

After consideration of the administrative record of these regulations; as well as the legislative history of the Act; the August 30, 1990, decision in the United States District Court for the District of Columbia; other opinions of the court; and in light of current technical information on impoundment design, construction, and inspection, OSM is proposing the following revisions to its permanent regulatory program. Consistent with its findings when promulgating the 1979, 1983, and 1988 rules, OSM has not identified any differences between impoundments for surface and underground mines that would appear to necessitate different regulatory provisions under this proposed rulemaking. Therefore, the proposed permitting rule applicable to impoundments for surface mining activities at 30 CFR 780.25 and the proposed rule for underground mining activities at 30 CFR 784.16 are identical. Similarly, the proposed performance rules for surface mining activities at 30

CFR 816.46 and 816.49 are identical to the proposed rules for underground mining activities at 30 CFR 817.46 and 817.49, respectively.

*Section 701.5 Definitions: Siltation Structure*

The definition of siltation structure is being relocated to 30 CFR 701.5 and is identical to the definition previously found in 30 CFR 816.46(a)(1). The proposal would delete the definition of siltation structure at 30 CFR 816.46(a)(1) and establish the same definition for siltation structures at 30 CFR 701.5—Definitions. This would be an organizational change only. Section 701.5 already includes definitions of interrelated terms such as, impounding structure, impoundments, and sedimentation pond. Moving the definition of siltation structure from § 816.46(a)(1) to § 701.5 will centralize the location of these related definitions.

*Section 701.5 Definitions: Other Treatment Facilities*

The proposed definition of other treatment facilities, a term related to siltation structures, is similar to the definition currently found in 30 CFR 816.46(a)(3). The proposal would delete the definition at 30 CFR 816.46(a)(3) and establish a similar definition of other treatment facilities at 30 CFR 701.5. The proposed rule would also revise the definition by adding the words "neutralization" and "precipitators", to indicate common water quality treatment processes, and the phrase to comply with all applicable State and Federal water-quality laws and regulations. The addition of these words and the phrase to the definition will clarify that the purpose of other treatment facilities is for compliance with applicable water quality laws, as well as specifically for the prevention of additional contributions of dissolved or suspended solids to streamflow or off-site runoff. Changing the definition does not change the thrust of the OSM performance standards in 30 CFR 816.41–49. Moving the definition of other treatment facilities from § 816.46(a)(3) to § 701.5 centralizes OSM's definitions and logically follows the relocation of the definition of siltation structure.

*Sections 780.25/784.16 Permitting Requirements for Reclamation Plans: Siltation Structures, Impoundments, Banks, Dams, and Embankments*

Section 780.25 of OSM's permanent program regulations establishes permitting requirements applicable to the design of each siltation structure, water impoundment, and coal processing waste bank, dam, or

embankment within the proposed permit area. The proposed revisions to § 780.25 include editorial changes as described below and the addition of specific reference to the SCS criteria for dam classification found in their Technical Release No. 60 (TR-60). These changes are needed to ensure that the permitting requirements for impoundments are consistent with the performance standards for impoundments that are tied both to SCS standards and MSHA requirements.

For editorial purposes OSM proposes to revise § 780.25 and 780.25(a) by removing the word "Ponds" and replacing it with "Siltation structures". This revision makes the section title consistent with the broader classification of structures intended to be covered by § 780.25 and with similar changes proposed at § 816.46 that will be discussed later.

In § 780.25(a)(2) OSM proposes to reference the SCS dam classification in TR-60. This additional language will clarify the need for structures to be classified with respect to SCS criteria as well as the MSHA criteria already referenced in § 780.25(a)(2). This approach will insure that impoundments that do not meet the MSHA criteria in § 77.216(a) of this Chapter, but are determined to be Class B or C impoundments by SCS criteria in TR-60, shall comply with the more rigorous standards that apply to all impoundments that meet the above MSHA criteria.

OSM proposes to revise § 780.25(a)(3) by removing the reference to § 77.216(a) of this title and by replacing it with a reference to § 780.25(a)(2), where the SCS and MSHA impoundment classification criteria would both be located.

In § 780.25(b) OSM proposes to replace the phrase "sedimentation ponds" with "siltation structures" to be consistent with the revised title for the section. OSM also proposes to remove the last two sentences of § 780.25(b) because the same requirements already exist in 30 CFR 780.25(c) (1) and (2).

OSM proposes to revise § 780.25(c)(3) by removing the reference to section 77.216(a) of this title and the phrase "located where failure would not be expected to cause loss of life or serious property damage," and by replacing it with a reference to § 780.25(a)(2), where equivalent MSHA standards and SCS impoundment classification criteria are now located. This would be consistent with changes described above.

In § 780.25(f), OSM proposes to replace the phrase "is 20 feet or higher or impounds more than 20 acre-feet"

with the phrase "meets the SCS Class B or C criteria for dams in TR-60 or meets the MSHA size or other criteria of § 77.216(a) of this chapter." This proposed revision will have the same effect as the existing regulations and make § 780.25(f) consistent with the regulation changes referencing structure classification previously discussed.

*Sections 816.46/817.46 Hydrologic Balance: Siltation Structures*

Section 816.46 of OSM's permanent program regulations establishes performance standards applicable to siltation structures. The proposed revisions would delete the definitions of siltation structures and other treatment facilities at § 816.46 (a)(1) and (a)(3) and establish similar definitions at § 701.5. This relocation of the definitions is an organizational change, the reason for which has been previously discussed.

In § 816.46(c)(2), OSM proposes to remove the spillway design requirements at § 816.46(c)(2) (i) through (iii) and replace those with reference to equivalent spillway design requirements in redesignated § 816.49(a)(9). The spillway design requirements in proposed § 816.49(a)(2) are the same as those in existing § 816.46(c)(2) (i) through (iii). Therefore, for clarity and conciseness, OSM is revising § 816.46(c)(2) to reference § 816.49(a)(9) and removing § 816.46(c)(2) (i) through (iii) instead of duplicating the same design requirements.

*Section 816.49/817.49 Impoundments*

Section 816.49 of OSM's permanent program regulations establishes performance standards for impoundments. The proposed revisions are to incorporate by reference specific criteria in the SCS Technical Release No. 60 (TR-60) and require impoundments meeting SCS Class B or C criteria in TR-60 to meet the same stability, spillway, foundation investigation, freeboard hydrography, inspection, and examination requirements as impoundments meeting MSHA criteria in § 77.216(a). The specific sections revised in 30 CFR 816.49 are summarized below. The rationale for those revisions as previously discussed is based on the August 30, 1990, decision in *NWF v. Lujan* and would achieve the necessary clarification.

OSM proposes to add new paragraph § 816.49(a)(1) which will incorporate by reference the SCS guidance document TR-60 as it specifically relates to minimum emergency spillway hydrologic criteria. This change requires the redesignation of existing paragraphs

in § 816.49(a). Paragraphs (a)(1) through (a)(12) will be redesignated as paragraphs (a)(2) through (a)(13) respectively.

Existing § 816.49(a)(1) would be redesignated as proposed § 816.49(a)(2).

Existing § 816.49(a)(2) would be redesignated as proposed § 816.49(a)(3).

Existing § 816.49(a)(3) would be redesignated as proposed § 816.49(a)(4). Proposed § 816.49(a)(4)(i) would add that impoundments meeting the SCS Class B or C criteria for dams in TR-60 would be subject to the requirements of this section. OSM also proposes to remove the phrase "located where failure would be expected to cause loss of life or serious property damage" because it would be a duplication of the SCS criteria.

In redesignated § 816.49(a)(4)(ii), OSM proposes to remove the reference to § 77.216(a) and replace it with a reference to § 816.49(a)(4)(i). This clarifies which safety factors are related to specific types of impoundment classification.

Existing § 816.49(a)(4) would be redesignated as proposed § 816.49(a)(5). OSM proposes to revise redesignated § 816.49(a)(5) by specifying that impoundments meeting the SCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrography criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, in order to be compatible with SCS requirements.

Existing § 816.49(a)(5) would be redesignated as proposed § 816.49(a)(6). In redesignated § 816.49(a)(6)(i), OSM proposes to conform the scope of this provision to the other paragraphs in this section by adding the phrase, "Class B or C for dams in TR-60, or" to the final sentence.

Existing § 816.49(a)(6) would be redesignated as proposed § 816.49(a)(7).

Existing § 816.49(a)(7) would be redesignated as proposed § 816.49(a)(8).

Existing § 816.49(a)(8) would be redesignated as proposed § 816.49(a)(9). OSM proposes to revise redesignated § 816.49(a)(9)(ii) by re-lettering paragraphs (a)(9)(ii) (A) and (B) to be paragraphs (a)(9)(ii) (B) and (C), respectively, and adding the spillway requirements for impoundments meeting the SCS Class B or C criteria for dams in TR-60 as paragraph (a)(9)(ii)(A).

Existing § 816.49(a)(9) would be redesignated as proposed § 816.49(a)(10).

Existing § 816.49(a)(10) would be redesignated as proposed § 816.49(a)(11). OSM proposes to revise redesignated § 816.49(a)(11)(iv) to clarify that impoundments meeting the SCS Class B or C criteria for dams in TR-60

like those meeting MSHA criteria may not be inspected by a registered land surveyor.

Existing § 816.49(a)(11) would be redesignated as proposed § 816.49(a)(12). OSM proposes to revise redesignated § 816.49(a)(12) to add the requirement that impoundments meeting the SCS Class B or C criteria for dams in TR-60 be examined in accordance with the requirements at § 77.216-3 of the MSHA rules. MSHA has proposed revisions to 30 CFR 77.216-3 (June 15, 1990 (55 FR 24526)) to allow water, sediment, or slurry impoundments and impounding structures to be inspected less frequently than once every 7 days as currently required. The MSHA proposal would allow the MSHA District Manager to approve alternate inspection frequencies. MSHA proposes to extend the time between inspections for low hazard potential structures with a demonstrated history of structural stability. OSM agrees with MSHA's proposed revisions to 30 CFR 77.216-3 but does need to modify its proposed regulatory text for 30 CFR 816.49(a)(12) to be consistent with the MSHA proposal at this time. If MSHA promulgates final regulations, OSM would allow the regulatory authorities in lieu of MSHA District Managers to approve alternate inspection frequencies for SCS Class B or C impoundments not regulated by MSHA. OSM also intends to have the regulatory authority use the same criteria (low hazard potential and a demonstrated history of structural stability) adopted by MSHA. A final OSM rule would reflect such a procedure. Existing § 816.49(a)(12) would be redesignated as proposed § 816.49(a)(13).

OSM proposes to revise § 816.49(c)(2)(i), dealing with requirements for temporary impoundments, by adding the requirement that impoundments meeting the SCS Class B or C criteria for dams in TR-60 as well as impoundments meeting the size or other criteria of § 77.216(a) of this title, shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour or greater event specified by the regulatory authority.

OSM proposes to revise § 816.49(c)(2)(ii) by referencing paragraph (c)(2)(i) and thus identify which impoundments must meet the requirements of paragraph (c)(2)(ii).

#### IV. Procedural Matters

##### *Federal Paperwork Reduction Act*

The proposed rule does not contain new information collection requirements which require approval by the Office of

Management and Budget in accordance with 44 U.S.C. 3501 *et seq.*

##### *Executive Order 12291 and Regulatory Flexibility Act*

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

##### *National Environmental Policy Act*

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address specified previously (see "ADDRESSES"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

##### *Author*

The principal author of this rule is Donald E. Stump Jr., P.E., OSM, Ten Parkway Center, Pittsburgh, PA 15220; Telephone: 412-937-2164 (Commercial); 726-2164 (FTS 2000).

##### *List of Subjects*

###### *30 CFR Part 701*

Law Enforcement, Surface mining, Underground mining.

###### *30 CFR Part 780*

Reporting and recordkeeping requirements, Surface mining.

###### *30 CFR Part 784*

Reporting and recordkeeping requirements, Underground mining.

###### *30 CFR Part 816*

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

###### *30 CFR Part 817*

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly it is proposed to amend 30 CFR parts 701, 780, 784, 816, and 817 as set forth below.

Dated: April 25, 1991.

David C. O'Neal,

Assistant Secretary for Land and Minerals Management.

**PART 701—PERMANENT REGULATORY PROGRAM**

1. The authority citation for part 701 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 et seq.), and Pub. L. 100-34.

2. Section 701.5 is amended by adding the definition "other treatment facilities" and transferring the definition "siltation structure" from § 816.46(a)(1).

**§ 701.5 Definitions.**

Other treatment facilities means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(1) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(2) To comply with all applicable State and Federal water-quality laws and regulations.

**PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

3. The authority citation for part 780 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; 16 U.S.C. 470 et seq.; and Pub. L. 100-34.

4. Section 780.25 is amended by revising the section heading and introductory text of paragraph (a), and by revising paragraphs (a)(2) introductory text, (a)(3) introductory text, (b), (c)(3), and the first sentence of paragraph (f) to read as follows:

**§ 780.25 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments.**

(a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) \* \* \*

(2) Each detailed design plan for a structure that meets the U.S. Soil Conservation Service Class B or C criteria for dams in SCS Technical Release No. 60 (TR-60), or meets or exceeds the size or other criteria of the Mine Safety and Health Administration, § 77.216(a) of this title shall:

(3) Each detail design plan for structures not included in paragraph (a)(2) of this section shall:

(b) Siltation structures. Siltation structures shall be designed in compliance with the requirements of § 817.46 of this chapter.

(c) \* \* \*

(3) For impoundments not included in paragraph (a)(2) of this section the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 816.49(a)(3)(ii) of this chapter.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of § 77.216(a) of this title, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure.\* \* \*

**PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

5. The authority citation for part 784 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; 16 U.S.C. 470 et seq.; and Pub. L. 100-34.

6. Section 784.16 is amended by revising the section heading and introductory text of paragraph (a), and by revising paragraphs (a)(2) introductory text, (a)(3) introductory text, (b), (c)(3), and the first sentence of paragraph (f) to read as follows:

**§ 784.16 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments.**

(a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) \* \* \*

(2) Each detailed design plan for a structure that meets the U.S. Soil Conservation Service Class B or C criteria for dams in SCS Technical Release No. 60 (TR-60), or meets or exceeds the size or other criteria of the Mine Safety and Health Administration, § 77.216(a) of this title shall:

(3) Each detailed design plan for structures not included in paragraph (a)(2) of this section shall:

(b) Siltation structures. Siltation structures shall be designed in compliance with the requirements of § 817.46 of this chapter.

(c) \* \* \*

(3) For impoundments not included in paragraph (a)(2) of this section the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 816.49(a)(3)(ii) of this chapter.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of § 77.216(a) of this title, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure.\* \* \*

**PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES**

7. The authority citation for part 816 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; and Pub. L. 100-34.

**§ 816.46 [Amended]**

B. In § 816.46, the following changes are made:

a. The designation (a)(1) and paragraph (a)(3) are removed;  
b. The designation (a)(2) is removed and the text is added to the existing text of paragraph (a); and

c. New paragraphs (a) (i) and (ii) are redesignated as paragraphs (a) (1) and (2).

9. Section 816.46 is amended by revising paragraph (c)(2) to read as follows:

**§ 816.46 Hydrologic balance: Siltation structures.**

\* \* \* \* \*

(c) \* \* \*

(2) *Spillways*. A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in § 816.49(a)(9).

10. Section 816.49 is amended by redesignating paragraphs (a)(1) through (a)(12) as paragraphs (a)(2) through (a)(13), respectively, and adding new paragraph (a)(1) to read as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (TR-60), 'Earth Dams and Reservoirs,' 1985 shall comply with 'Minimum Emergency Spillway Hydrologic Criteria' table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. 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 the National Technical Information Service (NTIS), 5285 Port Royal, Springfield, Virginia 22161, order No. PB 87-1517509/AS. Copies can be inspected at the OSM Headquarters Office, Administrative Records, U.S. Department of the Interior, 1100 L Street NW., room 5131, Washington, DC, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

11. Section 816.49 is amended by revising newly designated paragraph (a)(4) to read as follows:

**§ 816.46 Impoundments.**

(a) \* \* \*

(4) *Stability*. (i) An Impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall have a minimum static safety factor of 1.5 for normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 780.25(c)(3) of this chapter.

12. Section 816.49 is amended by adding the following sentence to end of newly designated paragraph (a)(5) to read as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(5) \* \* \* Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR-60.

13. Section 816.49 is amended by revising the second sentence of newly designated paragraph (a)(6)(i) to read as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(6) \* \* \* (i) \* \* \* For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

14. Section 816.49 is amended by revising newly designated paragraphs (a)(9)(ii) (A) and (B) and by adding a new paragraph (a)(9)(ii)(C) as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(9) \* \* \*

(ii) \* \* \*

(A) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR-60, or greater event as specified by the regulatory authority.

(B) For an impoundment meeting or exceeding the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(C) For an impoundment not included in paragraphs (a)(9)(ii) (A) and (B) of this section, a 25-year 6-hour or greater event as specified by the regulatory authority.

15. Section 816.49 is amended by revising the first sentence of newly designated paragraph (a)(11)(iv) to read as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(11) \* \* \*

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in

TR-60, or the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(11)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 shall be certified by a qualified registered professional engineer. \* \* \*

16. Section 816.49 is amended by revising newly designated paragraph (a)(12) to read as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216 of this title must be examined in accordance with § 77.216-3 of this title. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to § 77.216 of this title, shall be examined at least quarterly. All examinations must be done by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

17. Section 816.49 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

**§ 816.49 Impoundments.**

(c) \* \* \*

(2) \* \* \*

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the regulatory authority.

(ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the regulatory authority.

**PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES**

18. The authority citation for part 817 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; and Pub. L. 100-34.

**§ 817.46 [Amended]**

19. In § 817.46, the following changes are made:

a. Paragraphs (a)(1) and (a)(3) are removed;

b. The designation (a)(2) is removed and the text is added to the existing text of paragraph (a); and

c. New paragraphs (a)(i) and (ii) are redesignated as paragraphs (a)(1) and (2).

20. Section 817.46 is amended by revising paragraph (c)(2) to read as follows:

§ 817.46 Hydrologic balance: Siltation structures.

\* \* \* \* \*

(c) \* \* \*

(2) *Spillways.* A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in § 817.49(a)(9).

21. Section 817.49 is amended by redesignating paragraphs (a)(1) through (a)(12) as paragraphs (a)(2) through (a)(13), respectively and adding new paragraph (a)(1) to read as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (TR-60), 'Earth Dams and Reservoirs,' 1985 shall comply with the, 'Minimum Emergency Spillway Hydrologic Criteria,' table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. 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 the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-1517509/AS. Copies can be inspected at the OSM Headquarters Office, Administrative Records, U.S. Department of the Interior, 1100 L Street NW., room 5215 Washington, DC, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

22. Section 817.49 is amended by revising newly designated paragraph (a)(4) to read as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(4) *Stability.* (i) An Impoundment meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall have a minimum static safety factor of 1.5 for normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding

structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 784.16(c)(3) of this chapter.

\* \* \* \* \*

23. Section 817.49 is amended by adding a new sentence to the end of newly designated paragraph (a)(5) to read as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(5) \* \* \* Impoundments meeting the SCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

\* \* \* \* \*

24. Section 817.49 is amended by revising the last sentence of newly designated paragraph (a)(6)(i) to read as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(6) \* \* \*

(i) \* \* \* For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

\* \* \* \* \*

25. Section 817.49 is amended by revising newly designated paragraphs (a)(9)(ii)(A) and (a)(9)(ii)(B); and by adding a new paragraph (a)(9)(ii)(C) as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(9) \* \* \*

(ii) \* \* \*

(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR-60, or greater event as specified by the regulatory authority.

(B) For an impoundment meeting or exceeding the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(C) For an impoundment not included in paragraph (a)(9)(ii) (A) and (B) of this section, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

\* \* \* \* \*

26. Section 817.49 is amended by revising the first sentence of newly

designated paragraph (a)(11)(iv) to read as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(11) \* \* \*

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(11)(ii) of this section, except that all coal mine waste impounding structures covered by § 817.84 shall be certified by a qualified registered professional engineer.

\* \* \* \* \*

27. Section 817.49 is amended by revising newly designated paragraph (a)(12) to read as follows:

§ 817.49 Impoundments.

(a) \* \* \*

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216 of this title must be examined in accordance with § 77.216-3 of this title. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to § 77.216 of this title, shall be examined at least quarterly. All examinations must be done by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

\* \* \* \* \*

28. Section 817.49 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 817.49 Impoundments.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the regulatory authority.

(ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the regulatory authority.

# federal register

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Friday  
June 28, 1991

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## Part IV

### Department of Commerce

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International Trade Administration

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**Consortia of American Businesses in  
Eastern Europe; Notice**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[Docket No. 910637-1137]

**Consortia of American Businesses in Eastern Europe****AGENCY:** International Trade Administration, Commerce.**ACTION:** Notice of a New Business Consortia Grant Program to assist U.S. firms establishing a commercial presence in Eastern Europe.

**SUMMARY:** A pilot program has been designed to assist U.S. firms in establishing a commercial presence in Eastern Europe through the formation of Consortia of American Businesses in Eastern Europe (CABEE). CABEEs are private and public non-profit organizations which will be formed to promote U.S. goods and services in Eastern Europe. The participants in these consortia will be for-profit U.S. firms interested in trade with Eastern Europe. CABEEs will establish offices and staff in Eastern Europe to provide a broad range of services for their member firms, including market research, sales promotion, and other trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating CABEE offices in Eastern Europe. CABEEs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

**SUPPLEMENTARY INFORMATION:**

*Program Objectives:* CABEEs are intended to strengthen the U.S. business presence in Eastern Europe. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports, joint ventures, and U.S. direct investment in Eastern Europe. CABEEs will promote two-way trade and will be expected to support development of counterpart host country trade associations and/or other organizations that can respond to the business opportunities represented through the consortia.

*Funding Availability:* Pursuant to the provision headed section (a)(6) under the heading "Assistance for Eastern Europe" of title II of the Foreign Operations, Export Financing and Related Programs Appropriation Act, 1991, Public Law 101-513 and section 632(a) of the Foreign Assistance Act of 1961, as amended, funding for the program will come from the Agency for International Development. Commerce will administer the program on a pilot

basis pursuant to the authority contained in section 635(b) of the Foreign Assistance Act of 1961, as amended. The total amount of grant funds available for the pilot program is \$2.5 million.

*Funding Instrument and Project Duration:* The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of \$500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

**Request for Applications**

Competitive Application kits (Application Kits) #180-0028-1 will be available from Commerce starting June 28, 1991.

To obtain a copy of the Application Kit #180-0028-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored, telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the address designated in the Application Kit no later than 3 p.m. e.d.t. August 13, 1991. Subject to the availability of funds, awards will be made prior to the end of 1991.

*Eligibility:* Eligible applicants for the Business Consortia Grant Program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the following East European countries are eligible for this program: Poland, Hungary, Czechoslovakia, Bulgaria, Romania, and Yugoslavia. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the

program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

*Selection Criteria:* Priority consideration will be given to those CABEE proposals which:

1. Focus on Poland, Hungary, and Czechoslovakia as the geographic target of commercial activities.
2. Involve or relate to the following industries: Environment, energy, telecommunications, agriculture and agribusiness, and housing. Marketability of the products and/or services in the applicable East European countries will be taken into account in evaluating applications.

3. Are proposed by applicants with the capacity, qualifications and staff necessary to successfully undertake the intended activities.

4. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as CABEE members.

5. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant.

6. Contain a commitment to encourage, support and assist development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned explanation as to how that will be accomplished.

7. Present a realistic work plan detailing the services it will provide to the CABEE members.

8. Present a reasonable, itemized budget for the proposed activities.

Selection criteria 1-3 will be weighted equally but will be accorded a greater degree of importance than the remaining criteria. Selection criteria 4-8 will be weighted equally.

*Notifications:* All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

2. 15 CFR part 28 prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or cooperative agreement. A "Certification Regarding Lobbying" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required for awards exceeding \$100,000.

3. Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free

Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

4. A false statement on the application may be grounds for denial or termination of funds.

5. Awards under this program shall be subject to all Federal and Departmental

regulations, policies and procedures applicable to financial assistance awards.

6. All recipients are advised of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."

7. The Standard Form 424 (Rev. 4-88) mentioned in this notice is subject to the

requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

Dated: June 25, 1991.

George Muller,  
Director, Office of Export Trading Company  
Affairs.

[FR Doc. 91-15436 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DR-M

The Board of Directors has the honor to acknowledge the interest and cooperation of the stockholders in the affairs of the company during the past year. The financial statement shows a net profit of \$[Amount] for the year ending [Date]. The assets of the company are \$[Amount] and the liabilities are \$[Amount]. The Board of Directors has the honor to acknowledge the interest and cooperation of the stockholders in the affairs of the company during the past year. The financial statement shows a net profit of \$[Amount] for the year ending [Date]. The assets of the company are \$[Amount] and the liabilities are \$[Amount].

# Federal Register

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Friday  
June 28, 1991

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## Part V

### The President

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Proclamation 6307—Agreement on Trade Relations Between the United States of America and the Republic of Bulgaria

Proclamation 6308—Agreement on Trade Relations Between the United States of America and the Mongolian People's Republic

Friday  
June 28, 1901

Part V

## The President

Proclamation 2307—Agreement on Trade  
Relations Between the United States of  
America and the Republic of Bulgaria  
Proclamation 2308—Agreement on Trade  
Relations Between the United States of  
America and the Moldavian People's  
Republic

# Presidential Documents

Title 3—

Proclamation 6307 of June 24, 1991

The President

## Agreement on Trade Relations Between the United States of America and the Republic of Bulgaria

By the President of the United States of America

### A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Republic of Bulgaria to conclude an agreement on trade relations between the United States of America and the Republic of Bulgaria.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Bulgarian, was signed on April 22, 1991, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

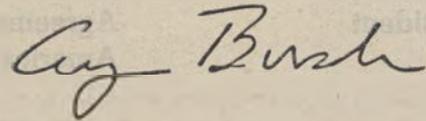
NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Republic of Bulgaria, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries

whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Bulgaria".

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



Billing code 3195-01-M

AGREEMENT ON TRADE RELATIONS  
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

The Government of the United States of America and the Government of the Republic of Bulgaria (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to adopt mutually advantageous and equitable rules governing their trade and to ensure a predictable commercial environment,

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Recognizing that the development of bilateral trade will contribute to better mutual understanding and cooperation, and can contribute to the general well-being of the peoples of each

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Party and promote respect for internationally recognized workers' rights,

Taking into account Bulgaria's membership in the International Monetary Fund and the International Bank for Reconstruction and Development and the prospects for economic reform and restructuring of the economy, and taking into account Bulgaria's request for Contracting Party status in the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"), and Bulgaria's intention to become a Party to the European Patent Convention of October 1973,

Desiring to create a mutually beneficial framework which will foster the development and expansion of commercial ties between their respective nationals and companies,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Have agreed as follows:

## ARTICLE I

## MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

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3. Each Party shall accord to imports of products and services originating in the territory of the other Party most-favored-nation treatment with respect to the availability of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic; and

(c) actions by either Party which are required or specifically permitted by the GATT (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT, including advantages accorded to developing countries; equivalent advantages accorded to developing countries under other multilateral agreements; and special advantages accorded by virtue of the GATT.

5. The provisions of paragraph 2 of this Article shall not apply to trade in textiles and textile products.

## ARTICLE II

## MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to

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like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Republic of Bulgaria shall accede to the International Convention on the Harmonized Commodity Description and Coding System and shall take all necessary measures to implement such Convention with respect to the Republic of Bulgaria. The Government of the United States of America shall endeavor to provide technical assistance, as appropriate, for the implementation of such measures.

7. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

### ARTICLE III

#### GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. Trade in products and services shall be effected by contracts between nationals and companies of the United States and nationals and companies of the Republic of Bulgaria concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery and terms of payment.

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2. Neither Party shall require or encourage nationals or companies of the United States or nationals or companies of the Republic of Bulgaria to engage in barter or countertrade transactions. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

#### ARTICLE IV

##### EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development and diversification of trade between their respective nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Republic of Bulgaria expects that, during the term of this Agreement, nationals and companies of the Republic of Bulgaria shall increase their purchases of products and services from the United States, while the Government of the United States expects that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of

products and services from the Republic of Bulgaria. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

#### ARTICLE V

##### GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of the other Party's government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the national and subnational level, and representatives of nationals and companies of the host Party.

#### ARTICLE VI

##### BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of nationals and companies of third countries.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

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4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Subject to laws and procedures regarding foreign missions, each Party shall permit, on a nondiscriminatory basis and at market prices, commercial representations of the other Party access to and use of office space and living accommodations.

6. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to serve as agents, consultants and distributors of nationals and companies of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail,

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including the use of enclosed envelopes and cards preaddressed to that national or company.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall, upon request, make available non-confidential, non-proprietary information within its possession to nationals and companies of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals and companies of the other Party at fair and equitable prices (and in no event at prices greater than those charged to any nationals or companies of third countries where such prices are set or controlled by the government) in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

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13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

#### ARTICLE VII

#### TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws, regulations, judicial decisions and administrative rulings of general application related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall make such information available in reading rooms in its own capital and shall endeavor to make such information available in the capital of the other Party.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow nationals and companies of the other Party the opportunity, to the extent practicable, to comment on the formulation of rules and regulations which affect the conduct of business activities.

## ARTICLE VIII

FINANCIAL PROVISIONS RELATING TO TRADE  
IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals and companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.

3. Expenditures in the territory of a Party by nationals and companies of the other Party may be made in local currency received in an authorized manner.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

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(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange and related matters; and

(d) the receipt of local currency and its use for local expenses.

#### ARTICLE IX

##### PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, and layout designs for integrated circuits as set forth in the text of a side letter attached hereto.

#### ARTICLE X

##### AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible

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in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

#### ARTICLE XI

##### IMPORT RELIEF SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports into the territory of one of the Parties of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other

factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, and notwithstanding paragraphs 1 and 2 of Article I, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures to such an extent and for such time as it deems necessary to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations

under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action, which may include the existence of critical circumstances, is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

6. In the selection of measures under this Article, the Parties shall endeavor to give priority to those which cause the least disturbance to the achievement of the goals of this Agreement.

7. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

8. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

## ARTICLE XII

### DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts

and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or companies of the Republic of Bulgaria. Such arbitration may be provided for by agreements in contracts between such nationals or companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules of 15 December 1976 and any modifications thereto, in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Republic of Bulgaria.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Republic of Bulgaria, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

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5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or on the law to be applied in such arbitration, or other form of dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

#### ARTICLE XIII

#### NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

#### ARTICLE XIV

#### CONSULTATIONS

1. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretations or implementation of

this Agreement or other relevant aspects of the relations between the Parties.

#### ARTICLE XV

##### DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship, state or other enterprise, cooperative or other organization legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned;

(b) "commercial representation," means a representation of a company of a Party; and

(c) "national," means a natural person who is a national of a Party under its applicable law.

#### ARTICLE XVI

##### GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

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(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article IX (and the related side letter) of this Agreement, provided that such measures shall be related to the extent of any injury suffered or the prevention of injury; or

(c) any other measure referred to in Article XX of the GATT.

2. Nothing in this Agreement limits the application of any agreement in force or which enters into force between the Parties on trade in textiles and textile products.

3. Both Parties reserve the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

#### ARTICLE XVII

##### ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the

date of exchange of written notices of acceptance by the two Governments and it shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

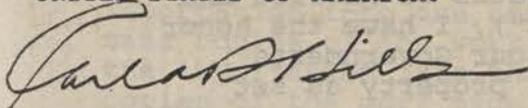
3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

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IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

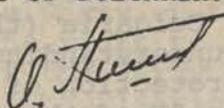
DONE at Washington, D.C. on this twenty-second day of April 1991, in duplicate, in the English and Bulgarian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



Carla A. Hills

FOR THE GOVERNMENT OF THE  
REPUBLIC OF BULGARIA:



Ognian Raytchev Pishev

THE UNITED STATES TRADE REPRESENTATIVE  
Executive Office of the President  
Washington, D.C. 20508

Washington, April 22, 1991

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Republic of Bulgaria (the "Agreement"), I have the honor to confirm the understanding reached by our Governments regarding the protection of intellectual property as set forth in Article IX of the Agreement.

1. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories. Specifically, each Party reaffirms the commitments made with respect to the Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967, the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris in 1971, and the Universal Copyright Convention of September 6, 1952 as revised at Paris on July 24, 1971. The Parties agree to adhere to the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971).

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall protect the works listed in Article 2 of the Berne Convention (Paris 1971) and any other works now known or later developed, that embody original expressions within the meaning of the Berne Convention, not limited to the following:

His Excellency  
Ognian Raytchev Pishev  
Ambassador of the Republic of Bulgaria

(1) all types of computer programs (including application programs and operating systems) expressed in any language, whether in source or object code which shall be protected as literary works and works created by or with the use of computers; and

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(ii) Rights in works protected pursuant to paragraph 2(a)(i) of this letter shall include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized copy of a work by sale, rental, or otherwise; and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work); the term "public" shall include:

(A) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in clause 2(a)(ii)(3)(A) or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

(iii) Each Party shall extend the protection afforded under paragraph 2(a)(ii) of this letter to authors of the other Party, whether they are natural persons or,

where the other Party's domestic law so provides, companies and to their successors in title.

(iv) Each Party shall permit protected rights under paragraph 2(a)(ii) of this letter to be freely and separately exploitable and transferable. Each Party shall also permit assignees and exclusive licensees to enjoy all rights of their assignors and licensors acquired through voluntary agreements, and be entitled to enjoy and exercise their acquired exclusive rights.

(v) In cases where a Party measures the term of protection of a work from other than the life of the author, the term of protection shall be no less than 50 years from authorized publication or, failing such authorized publication within 50 years from the making of the work, 50 years after the making.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a)(ii) of this letter (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) Each Party shall ensure that any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(viii) Each Party shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part; and

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraphs 2(a)(ii)(1) and (2) of this letter.

(ix) Paragraphs 2(a)(iii), 2(a)(iv) and 2(a)(vi) of this letter shall apply mutatis mutandis to sound recordings.

(x) Each Party shall:

(1) protect sound recordings for a term of at least 50 years from publication; and

(2) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the disposal of the possession of the original or copies for direct or indirect commercial advantage).

(xi) Parties shall not subject the acquisition and validity of intellectual property rights in sound recordings to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(1) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, or the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national, company or organization from those of other nationals, companies or organizations.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. Each Party shall provide a system for the registration of trademarks. Use of a trademark may be required as a prerequisite for registration.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

(1) Patents shall be available for all inventions, whether products or processes, in all fields of technology.

(2) Parties may exclude from patentability:

(A) any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon; and

(B) plant and animal varieties.

(3) If a Party does not grant patents for plant and/or animal varieties the Party shall provide effective protection through a sui generis system.

(4) Notwithstanding paragraphs 2(c)(i)(2) and 2(c)(i)(3),

(a) patents shall be available for microbiological processes and the products thereof, and

(b) Parties may exclude plant and animal varieties from patent protection only until protection for such inventions becomes an obligation under an international agreement to which both Parties adhere.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer, at least in one of the following situations:

(A) the product is new; or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(3) A patent may only be revoked on grounds that would have justified a refusal to grant the patent.

(iii) Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that the exceptions do not significantly prejudice the economic interests of the right-holder.

(iv) Term of Protection

Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

(v) Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of the provisions of this letter, where the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of the provisions of this letter;

(2) a patent has been issued for the product by the other Party, or an application is pending for the product with the other Party, prior to the entry into force of this letter; and,

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent, or of a pending application, for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent or provide notification of the existence of a pending application with the other Party, to the Party providing transitional protection. These submissions and notifications shall take place any time after the signing of this Agreement and the exchange of letters and before the implementation of the new Bulgarian patent law. This period, however, shall not be less than nine months. In the case of a pending application, the applicant shall notify the competent Bulgarian authorities of the issuance of a patent based on his application within six months of the date of grant by the other Party. The Party providing transitional protection shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

(vi) Compulsory Licenses

(1) Each Party may limit the patent owner's exclusive rights through compulsory licenses but only:

(A) to remedy an adjudicated violation of competition laws;

(B) to address, only during its existence, a declared national emergency;

(C) to address a failure to meet the reasonable demands of the domestic market, however importation shall constitute a means of meeting the demands of the domestic market; and

(D) to enable compliance with national air pollutant standards, where compulsory licenses are essential to such compliance.

(2) Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(A) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise which exploits such license.

(B) The payment of remuneration to the patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition laws.

(C) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(D) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the right-holder.

(E) Judicial review shall be available for:

1. decisions to grant compulsory licenses, except in the instance of a declared national emergency,

2. decisions to continue compulsory licenses, and

3. the compensation provided for compulsory licenses.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to right-holders of integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph 2(c)(vi) shall apply, mutatis mutandis, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected; provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock, but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

(e) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals, companies and organizations to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices, insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(e)(i) of this letter exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall protect such data against unfair commercial use. Further, each Party shall protect such data against disclosure except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

(2) Unless the national or company submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable period of time, taking into account the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation, and such period of time shall generally be not less than five years from the date of marketing approval.

(3) Where a Party relies upon a marketing approval granted by the other Party or a country other than the United States or Bulgaria, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

(f) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this letter by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of paragraph 2(f), when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment, no later than December 31, 1992, the legislation necessary to carry out the obligations of this letter and to exert its best efforts to enact and implement this legislation by that date.

4. For purposes of this letter:

(a) "right-holder," means the right-holder himself, any other natural or legal person authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights;

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

(c) Unless otherwise indicated by the context, all terms in this letter shall have the same meaning as in the Agreement.

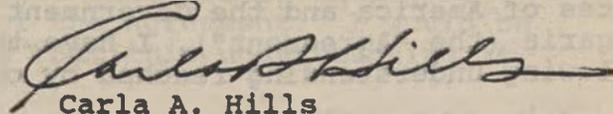
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5. Nothing in this letter shall be construed to diminish the rights of nationals and companies of a Party under the Agreement.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Carla A. Hills

THE UNITED STATES TRADE REPRESENTATIVE  
Executive Office of the President  
Washington, D.C. 20506

Washington, April 22, 1991

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria (the "Agreement"), I have the honor to confirm the following understanding reached by our Governments:

Financial Matters

As part of its economic liberalization process, the Government of the Republic of Bulgaria intends to make its currency convertible as soon as possible. Until the Bulgarian currency becomes freely convertible, the Government of the Republic of Bulgaria, for purposes of this Agreement, will provide access to freely convertible currencies, including through auctions, on a most-favored-nation basis.

Business Facilitation

Any permission required for commercial representations to establish and operate in the Republic of Bulgaria and any registrations required in the Republic of Bulgaria in order for nationals of either Party to engage or serve as agents, consultants or distributors in the territory of the Republic of Bulgaria will be accomplished through a simple registration process pursuant to which the permission or registration will be automatically and expeditiously granted, normally within 30 days of application, subject, of course, to regulations consistent with the exceptions set forth in Articles XIII and XVI of the Agreement.

His Excellency  
Ognian Raytchev Pishev  
Ambassador of the Republic of Bulgaria

Customs Unions or Free Trade Areas

With respect to Paragraph 4(a) of Article I of the Agreement, a Party may invoke this exception with respect to a customs union, free trade area, or an interim agreement necessary for the formation of the same, which is consistent with Article XXIV of the GATT, and only if such Party informs the other Party of its plans with respect to such customs union or free trade area and affords such other Party adequate opportunity for consultation.

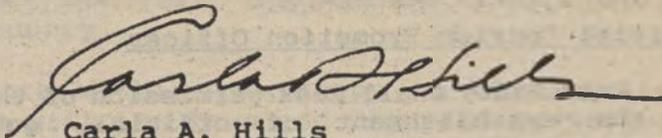
Consultation

In the event of Bulgaria's accession to the GATT, the Parties agree to consult to determine whether any changes to this Agreement are necessary or desirable.

I have the honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Carla A. Hills



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary for Travel and Tourism  
Washington, D.C. 20230

Washington, April 22, 1991

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter of today's date which reads as follows:

"In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the People's Republic of Bulgaria (the 'Agreement'), I have the honor to confirm the understanding reached by our Governments (the 'Parties') regarding tourism and travel-related services as follows:

1. The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and the People's Republic of Bulgaria. In this regard, the Parties recognize the desirability of exploring the possibility of negotiating a separate bilateral agreement on tourism.
2. The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Official Tourism Promotion Offices

3. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.
4. Permission to open tourism promotion offices or field offices, and the status of personnel who head and staff such offices, shall be as agreed upon by the Parties and subject to the applicable laws and regulations of the host country.
5. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country.

His Excellency  
Ognian Raytchev Pishev  
Ambassador of the Republic of  
Bulgaria

Page 2

6. Official governmental tourism offices shall engage in activities related to the facilitation of development of tourism between the United States and the People's Republic of Bulgaria, including:

- a) providing information about the tourism facilities and attraction in their respective countries to the public, and travel trade and the media;
- b) conducting meetings and workshops for representatives of the travel industry;
- c) participating in trade shows;
- d) distributing advertising materials such as posters, brochures and slides, and coordinating advertising campaigns; and
- e) performing market research.

7. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other Party.

#### Commercial Tourism Enterprises

8. Commercial tourism enterprises, whether privately or governmentally-owned, shall be treated as private commercial enterprises, fully subject to all applicable laws and regulations of the host country.

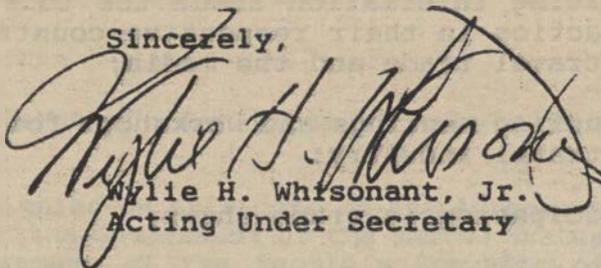
9. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled or administered by that Party or any joint venture therewith or any private company or joint venture between private companies, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to national and companies of the other Party on a fair and equitable basis.

10. Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from the Agreement as fully as all other industries and sectors.

I have the honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government."

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Wylie H. Whisonant, Jr.  
Acting Under Secretary

TERMS OF REFERENCE:  
THE UNITED STATES-BULGARIA JOINT COMMERCIAL COMMISSION

The United States-Bulgaria Joint Commercial Commission is established by the Governments of the United States and Bulgaria to facilitate the development of commercial relations and related economic matters between the United States of America and the Republic of Bulgaria.

The Commission shall work and shall formulate recommendations on the basis of mutual consent.

The Commission shall:

- Review the operation of the U.S.-Bulgaria Trade Agreement and make recommendations for achieving its objectives in order to obtain the maximum benefit therefrom;
- Exchange information about amendments and developments in the regulations of the United States and Bulgaria affecting trade under the U.S.-Bulgaria Trade Agreement;
- Consider measures which would develop and diversify trade and commercial cooperation. These measures shall include, but are not limited to encouraging and supporting contracts and cooperation between businesses of both countries, and between firms established in the United States and Bulgaria;
- Monitor and exchange views on U.S.-Bulgaria commercial relations; identify and where possible recommend solutions to issues of interest to both Parties;
- Provide a forum for exchanging information in areas of commercial, industrial and technological cooperation, where they have an impact on commercial relations; and
- Consider other steps which could be taken to facilitate and encourage the growth and development of commercial relations and related economic matters between the two countries.

The Commission shall be comprised of two sections, a U.S. section and a Bulgarian section. Each section shall be composed of a chairman and other government officials as designated by each Party.

The Commission shall meet as often as mutually agreed by the Parties, alternatively in Washington and Sofia.

Appropriate, senior-level officials from the U.S. Department of Commerce and the Bulgarian Ministry of Foreign Economic Relations shall act as co-chairmen of the Commission, and shall head their respective sections; each section of the Commission shall include other government officials as designated by each Party.

The Commission shall work on the basis of mutual agreement. The Commission shall, as necessary, adopt rules of procedure and work programs. The Commission may, as mutually agreed, establish joint working groups to consider specific matters. These working groups shall function in accordance with the instructions of the Commission.

Each section shall have an Executive Secretary, named by the chairman, who shall arrange the work of their respective section of the Commission. The Executive Secretary shall arrange the work of their respective section of the Commission, and perform the tasks of an organizational or administrative nature connected with the meetings of the Commission.

The Executive Secretaries shall communicate with each other as necessary to arrange Commission meetings and to perform other functions. Agendas for Commission meetings shall be agreed upon not later than one month prior to the meeting. The meeting shall consider matters included in this agenda, as well as further matters which may be added to the agenda by mutual agreement.

The Commission and its working groups shall work on the basis of mutual agreement. Agreed minutes signed by the co-chairmen of the Commission shall be kept for each meeting of the Commission, and shall be made public by each side. The Parties shall advise each other whenever measures and recommendations agreed to are subject to the subsequent approval of their respective governments.

Any document mutually agreed upon during the work of the Commission shall be in the English and Bulgarian languages, each language being equally authentic.

Expenses incidental to the meetings of the Commission and any working group established by the Commission shall be borne by the host country. Travel expenses from one country to the other, as well as living and other personal expenses of representatives participating in meetings of the Commission and any working group of the Commission shall be borne by the Party which sends such persons to represent it.

Each section may invite advisers and experts to participate at any meeting of the Commission or its working groups, except that such participation must be mutually agreed by the Parties in advance of the meeting.

The terms of reference of the Commission may be amended by mutual agreement of the Parties at any meeting or during the periods between meetings of the Commission.

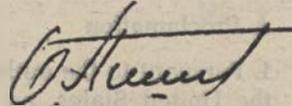
Done in Washington, D.C., April 22, 1991, in two copies, in the English and Bulgarian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA:



Thomas J. Duesterberg  
Assistant Secretary  
U.S. Department of Commerce



Ognian R. Pishev  
Ambassador to the United States

[FR Doc 91-15506  
Filed 6-25-91; 2:33 pm]  
Billing code 3190-01-C

Federal Register

Vol. 56, No. 125

Friday, June 28, 1991

**Presidential Documents**

Title 3—

Proclamation 6308 of June 24, 1991

The President

**Agreement on Trade Relations Between the United States of America and the Mongolian People's Republic**

By the President of the United States of America

**A Proclamation**

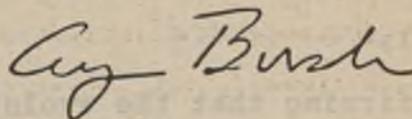
1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Mongolian People's Republic to conclude an agreement on trade relations between the United States of America and the Mongolian People's Republic.
2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").
3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Mongolian, was signed on January 23, 1991, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.
4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).
5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.
6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.
7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Mongolian People's Republic, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the Federal Register.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Mongolia".

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fiftieth.



AGREEMENT ON TRADE RELATIONS BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC

The Government of the United States of America and the Government of the Mongolian People's Republic (hereinafter referred to collectively as "Parties" and individually as "Party"),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between nationals and companies of the United States and nationals and organizations of the Mongolian People's Republic will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation and promote respect for internationally recognized worker rights,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between their respective nationals, companies and organizations,

Have agreed as follows:

#### ARTICLE I

##### MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation,

distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party nondiscriminatory treatment with respect to the allocation of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic;

(c) actions by either Party which are required or permitted by the General Agreement on Tariffs and Trade (the "GATT") (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT; and special advantages accorded by virtue of the GATT; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

5. The provisions of paragraph 2 of this Article shall not apply to Mongolian exports of textiles and textile products.

## ARTICLE II

### MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Mongolian People's Republic shall accede to the Convention Establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System, and shall take all necessary measures to implement entry into force of such Conventions with respect to the Mongolian People's Republic.

### ARTICLE III

#### GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. Trade in products and services shall be effected by contracts between nationals and companies of the United States and nationals and organizations of the Mongolian People's

Republic concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery, and terms of payment.

3. Neither Party shall require or encourage nationals or companies of the United States or nationals or organizations of the Mongolian People's Republic to engage in barter or countertrade transactions. Nevertheless, where nationals, companies or organizations decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

#### ARTICLE IV

##### EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals, companies and organizations.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Mongolian People's Republic expects that, during the term of this Agreement, nationals and organizations of the Mongolian People's Republic

shall increase their orders in the United States for products and services, while the Government of the United States anticipates that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of products and services from the Mongolian People's Republic. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals, companies and organizations in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

## ARTICLE V

## GOVERNMENT COMMERCIAL OFFICES

Upon agreement of the Parties, each Party may establish government commercial offices as integral parts of its diplomatic mission in the territory of the other Party.

## ARTICLE VI

## BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration, each Party shall permit the establishment within its territory of commercial representations of nationals, companies and organizations of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of nationals, companies and organizations of third countries.

3. Subject to its laws and procedures governing immigration, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Each Party shall permit, on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to and use of office space and living accommodations, whether or not designated for use by foreigners. The terms and conditions of such access and use shall in no event be on a basis less favorable than that accorded to commercial representations of nationals, companies and organizations of third countries.

6. Subject to its laws and procedures governing immigration, each Party shall permit nationals, companies and organizations of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its immigration laws and procedures, each Party shall permit nationals, companies and organizations of the other Party to serve as agents, consultants and distributors of nationals, companies and organizations of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals, companies and organizations of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national, company or organization.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals, companies and organizations of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals, companies and organizations of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals, companies and organizations of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals, companies and organizations of the other Party in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals, companies and organizations of the other Party.

#### ARTICLE VII

##### TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also make such information available in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals, companies and organizations of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities.

#### ARTICLE VIII

##### FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals, companies and organizations of the Parties shall be

made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals, companies and organizations of the other Party.

3. Nationals, companies and organizations of a Party holding currency of the other Party received in an authorized manner may deposit such currency in financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services, each Party shall grant to nationals, companies and organizations of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as

between the territory of that Party and that of any third country;

(c) rates of exchange and related matters, including access to freely usable currencies, such as through currency auctions; and

(d) the receipt and use of local currency.

#### ARTICLE IX

##### PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, industrial designs and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories. Specifically, each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 29, 1883, as revised at Stockholm on July 14, 1967.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall adhere to the Berne Convention for the Protection of Literary and Artistic

Works (Paris 1971) ("Berne Convention"). In addition, it shall comply with the provisions set forth below.

(ii) Works protected by copyright means any original, intellectual creative work of literary or artistic character, irrespective of their value, their literary or artistic merits or their purpose, and include, inter alia, the following:

(1) all types of computer programs;

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(iii) The rights protected pursuant to paragraph 2(a) this Article include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized

copy of a work by sale, rental, or otherwise;  
and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work).

(iv) Each Party shall extend the protection afforded under this section to authors (as defined under the Berne Convention) of the other Party, whether they are natural persons or, where the other Party's domestic law so provides, companies and organizations, and to their successors in title.

(v) Protected rights under paragraph 2(a) of this Article shall be freely and separately exploitable and transferable.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a) of this Article (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) If either Party has afforded no protection to works of foreign origin, it shall provide protection, consistent with this section, for all works of the other Party that are not in the public

domain in their country of origin at the time of entry into force of this Agreement in its territory.

(viii) Translation and reproduction licensing systems permitted in the Appendix to the Berne Convention:

(1) shall not be established where legitimate local needs are being met by voluntary actions of copyright holders or could be met by such action but for intervening factors outside the copyright holder's; and

(2) shall provide an effective opportunity for the copyright holder to be heard prior to the grant of any such licenses.

(ix) Any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(x) The Parties shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part;

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraph (iii)(1) and (2) of this section.

(xi) The provisions of paragraphs iv, v, and vii of this section shall apply mutatis mutandis to the producers of sound recordings.

(xii) Paragraph viii of this section shall apply mutatis mutandis to sound recordings.

(xiii) Each Party shall:

(1) adhere to the Geneva Convention for the Protection of Producers of Phonograms and protect sound recordings first fixed or published in the territory of the other Party;

(2) protect sound recordings for a term of at least 50 years from publication;

(3) protect sound recordings published in the territory of a Party within thirty days of their publication elsewhere and recordings produced by a national, company or organization of a Party; and

(4) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the disposal of the possession of

the original or copies for direct or indirect commercial advantage).

(xiv) The acquisition and validity of intellectual property rights in sound recordings shall not be subject to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national, company or organization from those of other nationals, companies or organizations.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. A system for the registration of trademarks shall be provided. Use of a trademark may be required as a prerequisite for registration.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that

the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other

government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

Patents shall be granted for all inventions, whether they concern products or processes, in all fields of technology, with the exception of any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented

process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer at least in one of the following situations:

(A) the product is new, or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(iii) Term of Protection

The term of protection shall be at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in

appropriate cases, to compensate for delays caused by regulatory approval processes.

(iv) Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of this Agreement, where the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of this Agreement;

(2) a patent has been issued for the product by the other Party prior to the entry into force of this Agreement; and

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent to the Party providing transitional protection. Such Party shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

(v) Compulsory Licenses

Each Party may limit the patent owner's exclusive rights through compulsory licenses only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(1) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such license.

(2) The payment of remuneration to the patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition law.

(3) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(4) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

(5) Decisions to grant or to continue compulsory licenses and the compensation provided for compulsory licenses shall be subject to review by a distinct higher authority.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to owners of rights in integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph (c)(v) of this Article shall apply, mutatis mutandis, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

(e) Industrial Designs and Models

(i) Each Party shall provide, at a minimum, protection for industrial designs which are new, original, ornamental and non-obvious. Each Party may condition such protection on registration or other formality. The term of protection of such designs shall extend for at least ten years.

(ii) Each Party shall provide to the owner of a protected design the right to prevent others from making, copying, using, or selling that industrial design.

(iii) Neither Party shall issue compulsory licenses for industrial designs except to remedy adjudicated violations of competition law to which the conditions set out in paragraph (c)(v) of this Article shall apply, mutatis mutandis.

(f) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals, companies and organizations to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(f)(i) of this Article exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) A Party which requires that trade secrets be submitted to carry out governmental functions, shall not use the trade secrets for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret except with the trade secret owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given the owner of the trade secret.

(2) Each Party may disclose trade secrets to third parties, only with the trade secret owner's consent or to the degree required to carry out necessary government functions. Wherever practicable, owners of trade secrets shall be given an opportunity to enter into confidentiality agreements with any non-government entity to which the Party is disclosing trade secrets to carry out necessary government functions.

(3) Each Party may require owners of trade secrets to disclose their trade secrets to third parties to protect human health or safety or to protect the environment only when the trade secret owner is given an opportunity to enter into confidentiality agreements with any non-government entity receiving the trade secrets to prevent further disclosure or use of the trade secret.

(g) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this Article by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of this Article, when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment no later than December 31, 1992 the legislation necessary to carry out the obligations of this Article and to exert its best efforts to enact and implement this legislation by that date.

4. For purposes of this Article:

(a) "right-holder," means the right-holder himself, any other natural or legal persons authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights; and

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

#### ARTICLE X

##### AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

#### ARTICLE XI

##### MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruptions. Such consultations shall be concluded

within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

5. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

6. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

## ARTICLE XII

## DISPUTE SETTLEMENT

1. Nationals, companies and organizations of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or organizations of the Mongolian People's Republic. Such arbitration may be provided for by agreements in contracts between such nationals, companies or organizations, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Mongolian People's Republic.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Mongolian People's Republic, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

#### ARTICLE XIII

##### NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

#### ARTICLE XIV

##### CONSULTATIONS

1. The Parties agree to consult periodically to review the operation of this Agreement.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of

this Agreement and other relevant aspects of the relations between the Parties.

#### ARTICLE XV

##### DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or an political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations;

(b) "commercial representation," means a representation of a company or organization of a Party;

(c) "national," means a natural person who is a national of a Party under its applicable law; and

(d) "organization," means, with respect to the United States, a company of the United States and, with respect

to the Mongolian People's Republic, any economic entity or enterprise (including a company) whether privately or governmentally owned.

## ARTICLE XVI

### GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article IX of this Agreement; or

(c) any other measure referred to in Article XX of the GATT.

2. Nothing in this Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

3. Nothing in this Agreement shall preclude a Party from applying its laws relating to entities substantially owned or effectively controlled by the government of the other Party.

## ARTICLE XVII

## ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

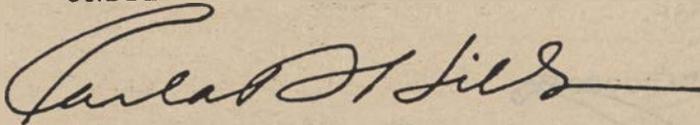
(c) If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law,

seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

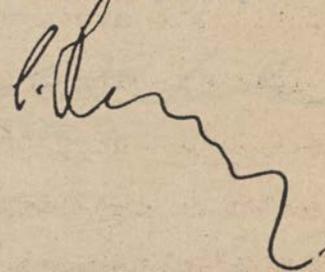
DONE at Washington on this twenty-third day of January, 1991, in duplicate, in the English and Mongolian languages. In the event of any conflict between the two texts, the English language text shall control.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



Carla A. Hills

FOR THE GOVERNMENT OF THE  
MONGOLIAN PEOPLE'S REPUBLIC:



Sed-Ochiryn Bayarbaatar

## THE UNITED STATES TRADE REPRESENTATIVE

WASHINGTON  
20506

January 23, 1991

Dear Mr. Minister:

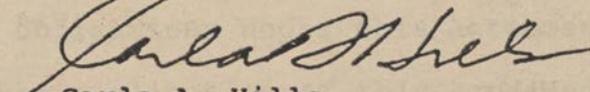
I have the honor to acknowledge receipt of your letter of today's date concerning benefits under the Generalized System of Preferences ("GSP") which reads as follows:

During the course of the negotiation of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic, the delegation of the Government of the Mongolian People's Republic requested that the Government of the United States of America accord benefits to products of the Mongolian People's Republic under the Generalized System of Preferences.

I wish to reiterate this request and ask that your government give it due consideration.

Please be assured that the Government of the United States will give your request due consideration. In this regard, we trust that the explanation provided by the U.S. delegation concerning the eligibility requirements for GSP were useful to your delegation.

Sincerely,

  
Carla A. Hills

The Honorable Sed-Ochiryn Bayarbaatar  
Minister of Trade and Industry  
Mongolian People's Republic

THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON  
20506

January 23, 1991

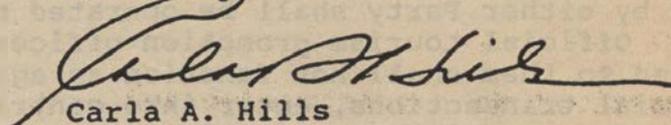
Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding the establishment of commercial representations in the Mongolian People's Republic as follows:

The Government of the Mongolian People's Republic intends to liberalize the procedure to establish a commercial representation. Pending a formal change in applicable legislation, the Government of the Mongolian People's Republic intends to administer the procedure as a simple registration process.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Carla A. Hills

The Honorable Sed-Ochiryn Bayarbaatar  
Minister of Trade and Industry  
Mongolian People's Republic



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Under Secretary for Travel and Tourism**  
Washington D C 20230

Washington, January 23, 1991

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and the Mongolian People's Republic.

The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Private and governmentally-owned commercial tourism enterprises shall be treated as private commercial enterprises fully subject to all applicable laws and regulations of the host country.

**The Honorable Sed-Ochiryn Bayarbaatar**  
**Minister of Trade and Industry**  
**Mongolian People's Republic**

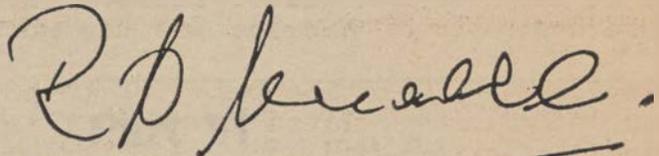
Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties will consider negotiating a separate agreement on tourism and travel-related services.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Rockwell A. Schnabel

[FR Doc. 91-15507

Filed 6-25-91; 2:34 pm]

Billing code 3190-01-C

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# **federal register**

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**Friday  
June 28, 1991**

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## **Part VI**

### **The President**

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**Proclamation 6309—To Modify Duty-Free Treatment Under the Generalized System of Preferences**



# Presidential Documents

**Title 3—****Proclamation 6309 of June 26, 1991****The President****To Modify Duty-Free Treatment Under the Generalized System of Preferences****By the President of the United States of America****A Proclamation**

1. Pursuant to section 504(c) of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the Generalized System of Preferences (GSP). Pursuant to section 504(c)(3) of the 1974 Act, the President may waive the application of section 504(c) of the 1974 Act with respect to any eligible article if the President determines, based on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)) and advice from the United States International Trade Commission (USITC), that such waiver is in the national economic interest of the United States. Further, pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article by reason of section 504(c) of the 1974 Act may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year.

2. Pursuant to subsection 504(c)(3) of the 1974 Act, I have determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the USITC on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act, as amended (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. Further, I have determined that it is necessary and appropriate to subdivide and amend the nomenclature of the Harmonized Tariff Schedule of the United States (HTS) in order to provide for one such waiver. Last, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to sections 504(c)(1) or 504(c)(2) of the 1974 Act.

3. In order to clarify a change in general note 3(c)(ii)(C) to the HTS made by Proclamation 6245 of February 4, 1991, to correct a typographical error in Proclamation 6282 of April 25, 1991, and to modify the designation of eligibility of Peru with respect to HTS subheading 7113.19.10 due to new information as to the value of imports under such subheading, I have determined it is necessary and appropriate to modify the HTS.

4. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 501, 502, 504, and 604 of the 1974 Act, do proclaim that:

(1) The waivers of the application of section 504(c) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and the beneficiary developing countries opposite such HTS subheadings set forth in Annex I(a).

(2) In order to provide in the nomenclature of the HTS for a waiver under the GSP for a specified designated eligible article when imported from Mexico, the HTS is modified as provided in Annex I(b) to this proclamation.

(3) In order to provide preferential tariff treatment under the GSP to certain countries which have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country previously excluded from receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty 1 Special subcolumn for each of the HTS provisions enumerated in Annex II(a) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A\*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(4) In order to provide that one or more countries which have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, general note 3(c)(ii)(D) to the HTS is modified as provided in Annex II(b) to this proclamation.

(5) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I(b) to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex I(c) to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex I(c) shall be deleted and the rate of duty provided in such Annex I(c) inserted in lieu thereof on the dates specified.

(6) In order to clarify a change in general note 3(c)(ii)(C) to the HTS, to correct a typographical error, and to modify the eligibility of Peru with respect to subheading 7113.19.10, the HTS is modified as provided in Annex III.

(7) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

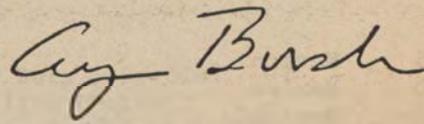
(8)(a) The waivers granted by Annex I(a) of this proclamation shall be effective on or after the date of signature of this proclamation.

(b) The amendments made by Annexes I(b), II, and III(b) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

(c) The amendments made by Annex I(c) of this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates indicated in the respective Annex I(c) columns.

(d) The amendments made by Annex III(a) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



Billing code 3195-01-M



## Annex II

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(a) For the following HTS subheadings, in the Rates of Duty 1 Special subcolumn, delete the symbol "A\*" and insert an "A" in lieu thereof:

0802.90.15	8414.59.80	8536.90.00
0804.50.40	8418.10.00	8544.30.00
2836.92.00	8504.10.00	8708.99.50
4409.10.40	8504.32.00	
7901.11.00	8536.69.00	

(b) General note 3(c)(ii)(D) to the HTS is modified by deleting the following HTS subheadings and the countries opposite such subheadings:

0802.90.15	Mexico	8504.32.00	Mexico
0804.50.40	Mexico	8536.69.00	Mexico
2836.92.00	Mexico	8536.90.00	Mexico
4409.10.40	Mexico		
7901.11.00	Mexico	8544.30.00	Mexico;
8414.59.80	Mexico		Philippines
8418.10.00	Mexico		
8504 10.00	Mexico	8708.99.50	Mexico

## Annex III

(a) General note 3(c)(ii)(C) to the HTS is modified by striking out the phrase "from such country or territory," and inserting "from such country or territory listed in subdivision (c)(ii)(A) of this note," in lieu thereof effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(1) For HTS subheadings 7113.19.10 and 8520.20.00, in the Rates of Duty 1 Special subcolumn, delete the symbol "A\*" and insert an "A" in lieu thereof.

(2) General note 3(c)(ii)(D) to the HTS is modified by deleting "7113.19.10 Peru".



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Federal Register

Vol. 56, No. 125

Friday, June 28, 1991

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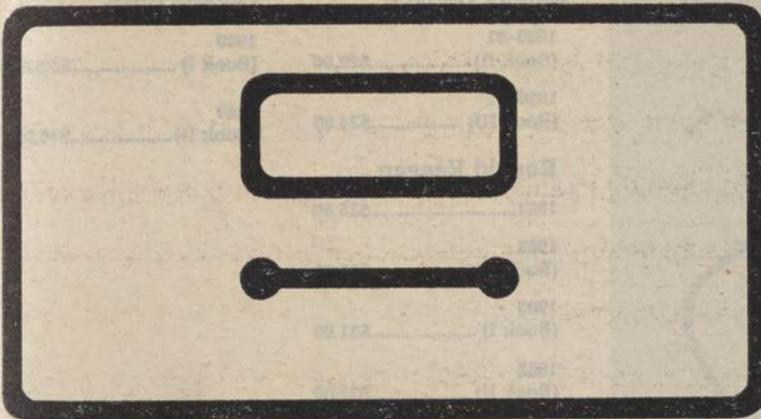
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