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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-022]

Citrus Canker; Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the "Citrus Canker—Mexico" regulations, which prohibited or restricted the importation into the United States from Mexico of fruit and peel of citrus and citrus relatives. This action is warranted because it has been determined that the citrus canker organism (*Xanthomonas campestris* pv *citri*) does not occur in Mexico. This amendment will relieve unnecessary restrictions on the importation of any fruit or peel of citrus or citrus relatives from Mexico.

EFFECTIVE DATE: July 23, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Griffin, Head, Permit Unit, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

Prior to the publication of this document, the "Citrus Canker—Mexico" regulations (referred to below as the regulations) regulated the importation, from Mexico into the United States, of fruit and peel of citrus and citrus relatives (fruit or peel of any genera, species, or varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae).

On January 11, 1991, we published in the **Federal Register** (56 FR 1122-1124, Docket No. 90-226) a proposal to remove the "Citrus Canker—Mexico" regulations. Comments on the proposed rule were required to be received on or before February 11, 1991. We received 27 comments. The comments were from U.S. State agriculture officials, representatives of U.S. citrus growers associations, and agriculture officials, citrus growers and exporters in Mexico. Twenty-four commenters supported the rule as proposed. Another commenter requested an extension of the comment period in order to obtain input from various industry members and to collect facts to be able to respond to the proposed change. Two other commenters requested further study, by the U.S. Department of Agriculture, of the proposed change based on their assertion that it has not been clearly demonstrated that citrus diseases which are known to occur in Mexico, and not in the U.S., will not adversely affect citrus fruit grown in the U.S. Specifically, they stated that "*mancha foliar*" is a potentially serious disease of citrus that does not occur in the U.S., but is known to infest limes in Mexico. According to these commenters, some experts believe that *Alternaria limicola* is resistant to desiccation and would likely be introduced into the United States from Mexico, thereby creating a threat to U.S. citrus if the chlorine dip treatment required for certain citrus grown in Mexico and imported into the United States is removed from the regulations.

As indicated in the proposed rule (at 56 FR 1122-1124), based on field observations and research over a 9-year period, USDA scientists believe that "*mancha foliar*" is not a dangerous or serious disease of citrus. In addition, foliar fungi, including "*mancha foliar*," are unlikely to be introduced into the United States via citrus fruit or peel, even if the peel is not treated. Leaves, stems, and other plant parts capable of introducing the disease are prohibited under other regulations in title 7, Code of Federal Regulations. We believe that citrus fruit from Mexico presents a negligible risk for the introduction of "*mancha foliar*" into the United States. The risk can only be associated with the potential for fruit to carry spores of the organism, not manifested as a disease, on the surface of the fruit. The potential for spores (as a surface contaminant on fruit) to provide the means for introducing the disease into the United States is statistically insignificant.

During the 9-year period of field observations and research, millions of fruit were examined in the groves and packing houses of Mexico. Groves were surveyed dozens of times, and citrus trees of every type and in every citrus growing area of Mexico have been checked and rechecked without any reports of "*mancha foliar*" being manifested on harvestable fruit. The intensity, duration, and quantity of work exceeds that necessary to document that "*mancha foliar*" does not present a plant pest risk.

Therefore, based on the rationale set forth in the proposal and in this document, we are removing Subpart—Citrus Canker—Mexico. The effect of this rule is to: (1) Allow Mexican limes to be imported into the United States from all parts of Mexico, subject only to inspection for freedom from pests; (2) allow other citrus from areas where "*mancha foliar*" occurs to be imported; and (3) remove the chlorine dip treatment previously required for fruit or peel of ethrog (*Citrus medica*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), Persian lime (*Citrus latifolia*), and tangerine (*Citrus reticulata*) from areas in Mexico not designated as infested areas.

Effective Date

This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication of this document.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Removing the "Citrus Canker—Mexico" regulations allows any fruit or peel of citrus or citrus relatives to be imported from all areas of Mexico into the United States, subject to inspection and treatment, if required for plant pests or diseases other than citrus canker.

The Animal and Plant Health Inspection Service has determined that this regulatory change will not cause an increase in plant pest or disease risk. Therefore, no economic consequences related to increased pest infestations are expected in the United States.

An increase in U.S. imports of Mexican citrus is expected, as discussed below, with the removal of the "Citrus Canker—Mexico" regulations.

Two varieties of limes are currently produced in Mexico—the Mexican (key) lime and the Persian lime. Given strong domestic demand in Mexico for key limes, it is unlikely that U.S. imports of these limes will exceed 0.5 percent of Mexican production, or about 3 thousand metric tons. U.S. imports of Persian limes grew throughout the 1980's despite the restrictions established in 1983 under 7 CFR 319.27 *et seq.* Because most Persian limes grown in Mexico are not grown in areas designated as infested, removal of the restrictions will largely amount to removal of certification and treatment requirements. Only a modest increase (1–2 percent, or 550–1,100 metric tons) in U.S. imports of Persian limes from Mexico is expected as a result of removing these requirements.

A total of 985 farms in the U.S. produce seedless lime varieties similar to the Persian lime. U.S. fresh seedless lime production averaged 45 thousand metric tons in 1988 and 1989. There is currently no commercial production of key limes in the United States. This fruit is produced in the U.S. only as a novelty item for localized markets; no data is available regarding the number of U.S. key lime producers.

In 1988 and 1989, Persian limes from Mexico supplied approximately 54 percent of the total fresh limes available in the United States. Increases in U.S. imports of Mexican limes of 550–1,100 metric tons will increase the total U.S. supply by no more than 1 percent. No appreciable decrease in U.S. lime prices will result from this increase, and no economic impact on U.S. producers or consumers of seedless limes is expected. Imports of key limes from Mexico will supply essentially 100 percent of the key lime market in the United States as a result of the removal of 7 CFR 319.27 *et seq.* The increased availability of key limes is a gain to U.S. key lime consumers. U.S. key lime producers face increased competition, but may still be able to sell their produce in localized markets.

Mexico produces large quantities of oranges, grapefruits, and tangerines, while production of lemons and ethrog is minor. The Mexican domestic market, however, consumes most of this production, leaving less than 1 percent of the oranges and grapefruit, and 7 percent of the tangerines, for export.

The impact of removing 7 CFR 319.27 will be largely one of removing the certification and treatment requirements. No significant change in U.S. imports of oranges, grapefruits, and tangerines occurred when 7 CFR 319.27 was established in 1983. Since domestic demand for citrus in Mexico is strong, removal of the regulations will cause only very modest (1–2 percent) increases in U.S. imports of Mexican oranges, grapefruit, and tangerines.

A total of 4,998 farms in the U.S. produce grapefruits; 14,312 produce oranges; and 853 produce tangerines. U.S. production of these citrus fruits in 1988 and 1989 averaged 1,240 thousand metric tons of grapefruit, 1,845 thousand metric tons of oranges, and 140 thousand metric tons of tangerines. Mexican imports supply less than 1 percent of the total U.S. fresh supplies of oranges and grapefruits, and approximately 10 percent of the total U.S. supply of tangerines. Modest increases in U.S. imports of Mexican oranges and grapefruit will have no effect on U.S. orange and grapefruit prices, and no economic impact on U.S. orange and grapefruit producers or consumers is expected. Modest increases in U.S. imports of Mexican tangerines (1–2 percent of 130–260 metric tons) will result in less than a 0.2 percent increase in U.S. supplies during the months when tangerines normally arrive from Mexico. This small increase in supply will not cause an appreciable decrease in U.S. tangerine prices and will have little or no effect on U.S. tangerine prices or on U.S. tangerine producers or consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Citrus canker, Fruit, Imports, Plants (agriculture), Plant diseases, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

1. The authority citation for 7 CFR part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c) unless otherwise noted.

§§ 319.27 through 319.27–11 [Removed and reserved]

2. "Subpart—Citrus Canker—Mexico" (7 CFR 319.27 through 319.27–11) is removed.

Done in Washington, DC, this 19th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17514 Filed 7–22–91; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV–91–293]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1991–92 fiscal period. Authorization of this budget will permit the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committee) to incur expenses that are reasonable and necessary to administer

the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: September 1, 1991, through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the 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 88 handlers and approximately 285 producers of potatoes in Colorado Area 2. 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 Colorado Area 2 potato producers and handlers may be classified as small entities.

The committee unanimously voted at its May 16, 1991, meeting to recommend its 1991–92 budget and assessment rate to the Secretary of Agriculture for consideration.

The committee, the agency responsible for local administration of the order, consists of producers and handlers of Colorado Area 2 potatoes. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected shipments of fresh Colorado Area 2 potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1991–92 fiscal year of $54,270 is $3,595 more than the previous year due to increases in salaries, employees' benefits, and office expenses. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 50 percent is paid under the State and 50 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1991–92 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 12,000,000 hundredweight, will yield $48,000 in assessment revenue. An additional $6,270 from the committee's authorized reserve will result in total funds of $54,270, which will be adequate to cover budgeted expenses. The projected reserve for the end of the 1991–92 fiscal period is estimated at $38,700, which will be carried over into the next fiscal period. This amount is within the maximum permitted by the order of two fiscal period's expenses.

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

A proposed rule was published in the **Federal Register** on June 26, 1991 (56 FR 29196). This document contained a proposal to add § 948.207 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 8, 1991. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is hereby amended as follows.

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

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

2. A new § 948.207 is added to read as follows:

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

§ 948.207 Expenses and assessment rate.

Expenses of $54,270 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17457 Filed 7–22–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–19; Amdt. 39–7068]

Airworthiness Directives; Rolls-Royce plc (RR) GEM Mk 530 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to RR GEM Mk 530 series

engines, which requires a repetitive leak check inspection of the hydromechanical fuel control unit (HMU). This AD also requires a one-time x-ray or disassembly inspection to confirm correct assembly of the HMU. This amendment is prompted by two events of significant external fuel leakage from the HMU. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: Effective August 12, 1991.

Comments must be received no later than August 12, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of August 12, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Office, ANE–142, Engine and Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: Two revenue service events have occurred, where significant fuel has leaked from the HMU in the area of the electrical connector. The cause of the leakage has been determined to be incorrect assembly of the torque motor transfer tube preformed packing and backup retaining ring assembly. It has also been determined that the misassembly can occur at HMU overhaul, or at new HMU manufacture. Therefore, inclusion of the x-ray or disassembly one-time inspection, (required to be completed by December 31, 1991), in this AD, without any further public notice is substantiated as follows. The population of affected units is unknown, and timely execution and completion of this program requires initiation of the one-time inspections. Further, any delay in incorporation of the one-time inspection program may result in a very short compliance interval. In addition, based on inspection findings the compliance schedule may be subject to further modification. For the above reasons, incorporation of the one-time inspection requirement in this AD is justified in order to minimize the duration of the inspection program, prevent a very short compliance interval, and reduce the exposure of revenue service aircraft to a potentially significant engine fire hazard. This condition, if not corrected, could result in external fuel leakage from the HMU, and a fire hazard in the engine nacelle.

Since this situation is likely to exist or develop on other engines of the same type design, this AD requires repetitive visual inspection of the HMU for external fuel leakage. This AD also requires a one-time x-ray or disassembly inspection of the HMU preformed packing and backup retaining ring assembly to determine correct assembly. The repetitive inspection program is not required for HMU's determined to be assembled correctly.

Since this condition could result in a fire hazard to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this unsafe condition. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to inspect the HMU to identify external fuel leakage and incorrect assembly as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment without public comment, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written, data views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–05—**Rolls-Royce plc:** Amendment 39–7068. Docket No. 91–ANE–19.

Applicability: Rolls-Royce plc (RR) GEM Mk 530 series engines, installed on, but not limited to, Westland 30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent external fuel leakage from the hydromechanical fuel control unit (HMU) which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For engines equipped with Hamilton-Standard Model JFC118-22 HMU, part numbers 779218-3, 779218-6, 779218-9, 779218-12, excluding HMU's marked "MS090-001" adjacent to the identification plate, perform the following:

(1) Perform an HMU leak check inspection in accordance with RR Service Bulletin (SB) GEM-73-24, dated October 29, 1990, within the next 15 hours time in service after the effective date of this AD.

(2) Thereafter, reinspect the HMU daily for fuel leakage within 30 minutes of the last shut-down of the day, in accordance with RR SB GEM-73-24.

(3) Remove from service, prior to further flight, HMU's exhibiting any fuel leakage when inspected in accordance with paragraphs (a)(1) or (a)(2) of this AD.

(4) X-ray or disassemble inspect the HMU for correct assembly in accordance with the Accomplishment Instructions of Hamilton-Standard (HS) SB JFC118-22-73-10, dated November 21, 1990, at the next engine shop visit or HMU removal, or by December 31, 1991, whichever occurs first.

(5) Remove from service, prior to further flight, HMU's confirmed incorrectly assembled when inspected in accordance with paragraph (a)(4) of this AD.

(6) For HMU's determined to be correctly assembled when inspected in accordance with paragraph (a)(4) of this AD, the repetitive inspections of paragraphs (a)(1) or (a)(2) of this AD are no longer required.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations) as appropriate, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Service, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The leak check inspection and the x-ray and disassembly inspection shall be done in accordance with the following documents:

Document	Page	Revision	Date
RR SB GEM-73-24.	All	Original	Oct. 29, 1990.
HS SB JFC118-22-73-10.	All	Original	Nov. 21, 1990.
Total Pages: 16.			

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 United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096-1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7068, AD 91-15-05) becomes effective August 12, 1991.

Issued in Burlington, Massachusetts, on June 21, 1991.

Jay J. Pardee,

Assistant Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 91-17422 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD 05-91-37]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 24, 1991 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations in 33 CFR 100.502 are effective from 9 a.m. to 5 p.m., August 24, 1991. In case of inclement weather causing the event to be postponed, the regulation will be effective from 9 a.m. to 5 p.m., August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately fifty to sixty powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17431 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-34]

Special Local Regulations for Marine Events; Havre de Grace Powerboat Regatta, Susquehanna River, Havre de Grace, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.510.

SUMMARY: This notice implements 33 CFR 100.510 for the annual Havre de Grace Powerboat Regatta. The event will be held on the Susquehanna River, west of Garrett Island. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.510 are effective for the following periods:

11 a.m. to 7 p.m., August 10, 1991.
11 a.m. to 7 p.m., August 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer.

Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Susquehanna River Optimist Club has submitted an application to hold the annual Havre de Grace Powerboat Regatta on August 10 and 11, 1991, on the Susquehanna River, west of Garrett Island. The powerboat race will consist of approximately seventy five inboard hydroplanes, runabouts, and outboard performance crafts ranging from eight to twenty three feet in length racing around an oval course. Three to twelve boats will race at once, at speed up to 140 miles per hour. The races will last from four to five hours. Since this event is of the type contemplated by these regulations and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Susquehanna River, 33 CFR 100.510 will be in effect. Closure of the entire waterway is not anticipated and marine traffic will be allowed to proceed up the Susquehanna River using that portion of the waterway east of Garrett Island.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17428 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-36]

Special Local Regulations for Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.504.

SUMMARY: This notice implements 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event to be held on July 27, 1991 in the Ship Channel and on the Great Egg Waterway, Ocean City, New Jersey. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations in 33 CFR 100.504 are effective from 5 p.m. to 11 p.m., July 27, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information:

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade. The event will consist of approximately 125 vessels ranging from 12 to 55 feet in length. The parade will start at Ship Channel Buoy 4(LLNR 1160), cruise down the channel through Great Egg Waterway to Daybeacon 28(LLNR 33865), and return to Great Egg Waterway Buoy 2(LLNR 33800). Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted at any given time, since commercial vessels will be permitted to transit the regulated area as the parade progresses.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17429 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-35]

Special Local Regulations for Marine Events; U.S. Marine Corps Insertion/Extraction Demonstration; Severn River, Annapolis, MD

AGENCY: Coast Guard DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the U.S. Marine Corps Insertion/Extraction Demonstration, an annual event to be held August 16, 1991 on the Severn River, Annapolis, Maryland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. They will restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 11:45 a.m. to 3:30 p.m., August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the U.S. Marine Corps Insertion/Extraction Demonstration. The demonstration will be held in that portion of the Severn River bounded on the south by Dungan Basin and to the north by the State Route 450 Bascule Bridge. It will consist of marines parachuting from one H-46 Helicopter at various altitudes ranging from 2,500 to 10,000 feet. The marines will be lifted from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17430 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 100 and 165

[CGD 91-038]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous

cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list concludes safety zones, security zones, and special local regulations that were established between April 1, 1991 and June 30, 1991 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Regulatory Paralegal, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1991 through June 30, 1991 unless otherwise indicated.

Docket No.	Location	Type	Effective date
CGD1-91-023	Sandy Hook Channel	Security	Mar. 28, 91.
CGD1-91-025	New York Harbor	Security	Mar. 26, 91.
CGD1-91-032	Upper Bay And East River	Safety	June 10, 91
CGD1-91-033	Manhasset Bay	Safety	May 4, 91.
CGD1-91-038	Hudson River	Safety	June 2, 91.
CGD1-91-039	Jamaica Bay	Safety	May 9, 91.
CGD1-91-042	Upper Bay and East River	Safety	May 26, 91.
CGD1-91-047	Chester, Ct	Safety	June 12, 91.
CGD1-91-048	West Milford, N.J	Special	May 18, 91.
CGD1-91-050	New York, East River	Safety	May 16, 91.
CGD1-91-053	Long Island Sound	Safety	May 18, 91.
CGD1-91-064	Upper Bay of NY and NJ	Safety	June 10, 91.
CGD1-91-069	Connecticut River	Special	June 27, 91.
CGD1-91-070	Upper Hudson River	Safety	June 8, 91.
CGD1-91-072	Harvard-Yale Regatta	Special	June 1, 91.
CGD1-91-078	Castle Point	Safety	June 19, 91.
CGD1-91-096	Hudson River	Safety	June 28, 91.
CGD7-91-21	Marathon Offshore	Special	Apr. 28, 91.
CGD7-91-26	St Petersburg	Special	Apr. 7, 91.
CGD7-91-29	City of Ft. Lauderdale	Special	Apr. 20, 91.
CGD7-91-39	Savannah River	Special	June 7, 91.
CGD7-91-40	Lake Worth, ICW	Special	May 5, 91.
CGD7-91-44	Sertoma Club	Special	May 19, 91.
CGD7-91-56	Singer island Beach	Special	June 23, 91.
CGD7-91-57	Cape Canaveral	Special	June 29, 91.
CGD7-91-59	Lake Worth, Fl	Special	June 29, 91.
CGD8-91-09	Neches River	Special	Apr. 21, 91.
CGD8-91-14	Kawasaki Country	Special	June 16, 91.
COTP Baltimore 91-01	Patapsco River	Security	Apr. 17, 91.
COTP Boston 91-34	Boston Inner Harbor	Safety	May 18, 91.
COTP Charleston 91-45	Ashley River	Safety	June 10, 91.
COTP Cleveland 91-02	Cuyahoga River	Safety	June 6, 91.
COTP Corp Chris 91-01	Brownsville Ship Channel	Safety	Jan. 13, 91.
COTP Corp Chris 91-02	Corp Chris Ship Channel	Safety	Feb. 28, 91.
COTP Hampton 91-5-02	Chesapeake Bay	Safety	Apr. 20, 91.
COTP Hampton 91-5-03	Hampton River	Security	May 12, 91.
COTP Hampton 91-5-04	Norfolk Harbor Reach	Safety	May 31, 91.
COTP Hampton 91-5-05	Chesapeake Bay	Safety	June 28, 91.
COTP Houston 90-04	Simms Bayou	Safety	May 22, 90.
COTP Houston 90-05	Houston Ship Channel	Safety	June 4, 90.
COTP Houston 91-01	Houston Ship Channel	Safety	Apr. 6, 91.
COTP Huntington 91-01	Kanawha River	Safety	June 2, 91.
COTP Jack/ville 91-14	St. Johns River	Safety	Mar. 16, 91.
COTP Jack/ville 91-17	Intracoastal Waterway	Safety	Mar. 24, 91.
COTP Jack/ville 91-20	St Johns River	Safety	Mar. 28, 91.
COTP Jack/ville 91-31	St Johns River	Safety	Apr. 7, 91.
COTP Jack/ville 91-35	St Johns River	Safety	Apr. 13, 91.
COTP Jack/ville 91-38	Amelia River	Safety	May 3, 91.
COTP Jack/ville 91-49	St Johns River	Safety	May 19, 91.

Docket No.	Location	Type	Effective date
COTP Jack/ville 91-55	St Johns River	Safety	June 2, 91.
COTP LA/LB 90-02	Ports of LA/LB	Safety	May 23, 91.
COTP LA/LB 90-08	Ports of LA/LB	Safety	Apr. 23, 91.
COTP LA/LB 91-09	Ports of LA/LB	Safety	Apr. 29, 91.
COTP LA/LB 91-10	Ports of LB	Safety	May 13, 91.
COTP LA/LB 91-11	Ports of LB	Safety	June 8, 91.
COTP LA/LB 91-12	Ports of LB	Safety	June 7, 91.
COTP LA/LB 91-13	Ports of LB	Safety	June 11, 91.
COTP LA/LB 91-14	Ports of LA	Safety	June 15, 91.
COTP Louisville 90-18	Louisville, KY	Safety	Dec. 31, 90.
COTP Louisville 90-17	Louisville, KY	Safety	Dec. 20, 90.
COTP Louisville 90-16	Louisville, KY	Safety	Dec. 10, 90.
COTP Miami 91-24	Key Largo	Security	Apr. 1, 91.
COTP Miami 91-25	Upper Matecumbe	Security	Apr. 3, 91.
COTP Miami 91-37	Port Everglades	Safety	Apr. 19, 91.
COTP Miami 91-46	Miami	Security	May 17, 91.
COTP Mobile 91-01	Mobile Bay	Safety	Dec. 30, 90.
COTP Mobile 91-02	Mississippi Sound	Security	Jan. 21, 91.
COTP Mobile 91-03	Pescagoula River	Security	Mar. 16, 91.
COTP Mobile 90-05	Gulf Intracoastal	Safety	Aug. 9, 90.
COTP Mobile 90-06	Waters of the GICW	Safety	June 1, 90.
COTP Mobile 90-08	Mobile River	Safety	June 26, 90.
COTP Mobile 90-14	Mississippi Sound	Safety	Aug. 4, 90.
COTP Mobile 90-16	Mobile Bay	Safety	Aug. 10, 90.
COTP Mobile 90-17	Mobile Bay	Safety	Nov. 15, 90.
COTP Morgan City	Lake Palourde	Safety	July 22, 90.
COTP New Orleans 90-04	Lower Mississippi	Safety	July 4, 90.
COTP New Orleans 90-05	Lower Mississippi	Safety	July 4, 90.
COTP New Orleans 90-06	Lower Mississippi	Security	Oct. 24, 90.
COTP New Orleans 90-07	M/V Green Island	Security	Oct. 27, 90.
COTP Paducah 91-02	Cumberland River	Safety	Apr. 9, 91.
COTP Paducah 91-03	Upper Mississippi	Safety	June 8, 91.
COTP Pittsburgh 91-01	Monongahela River	Safety	Feb. 22, 91.
COTP Pittsburgh 91-02	Ohio River	Safety	May 25, 91.
COTP Port Arthur 90-03	Port of Beaumont	Security	Aug. 25, 90.
COTP Port Arthur 90-04	Port of Port Arthur	Security	Aug. 31, 90.
COTP Port Arthur 90-05	Sabine Neches Waterway	Security	Aug. 29, 90.
COTP Portland 91-01	Columbia River	Safety	Mar. 5, 91.
COTP Portland 90-07	Coos Bay	Safety	Sept. 21, 90.
COTP Puget Sound 91-02	Puget Sound, Washington	Safety	May 11, 91.
COTP St Louis 91-01	Illinois River	Safety	Jan. 10, 91.
COTP St Louis 91-02	Illinois River	Safety	Jan. 11, 91.
COTP St Louis 91-03	Illinois River	Safety	Jan. 17, 91.
COTP St Louis 91-04	Illinois River	Safety	Jan. 22, 91.
COTP St Louis 91-05	Upper Mississippi	Safety	Apr. 1, 91.
COTP St Louis 91-06	Upper Mississippi	Safety	May 10, 91.
COTP St Louis 91-07	Upper Mississippi	Safety	May 7, 91.
COTP St Louis 91-08	Upper Mississippi	Safety	May 7, 91.
COTP SF Bay 91-05	San Francisco Bay	Safety	May 4, 91.
COTP SF Bay 91-06	San Francisco Bay	Safety	June 9, 91.
COTP SF Bay 91-08	San Francisco Bay	Safety	June 14, 91.
COTP San Juan 91-02	San Juan Harbor	Safety	May 19, 91.
COTP Savannah 91-16	Savannah River	Safety	Apr. 9, 91.
COTP Savannah 91-23	Savannah River	Safety	Apr. 6, 91.
COTP Savannah 91-53	Savannah River	Safety	May 23, 91.
COTP Tampa 91-47	Tampa Bay	Security	May 20, 91.
COTP Tampa 91-51	Crystal River	Safety	May 24, 91.

Dated: July 10, 1991.

D.M. Wrye,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 91-17247 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3972-3]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of compliance date extension (12-4-5154).

SUMMARY: Today's action announces a 60-day compliance date extension for the applicability of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control the emission of volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of these regulations, including the applicable compliance dates, is stayed for 60 days (until August 30, 1991) for the following parties: (1) The Illinois Environmental Regulatory Group (IERG), including its member companies; (2) Allsteel, Incorporated (Allsteel); (3) Riverside Laboratories, Incorporated (Riverside); (4) the Printing Industry of Illinois/Indiana, including its member companies, and R.R. Donnelley & Sons Company; (5) Reynolds Metals Company (Reynolds); (6) General Motors Corporation (GM); (7) Stepan Company (Stepan); and (8) Duo-Fast Corporation (Duo-Fast). USEPA is issuing this compliance date extension pursuant to sections 110(c), 301(a) and 307(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. 7410(c), 7601(a) and 7607(d)(1)(B), which allow the Agency to revise a Federal implementation plan. The Agency is not subjecting this rulemaking to notice and comment

based on the good cause exception in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B). Further, this compliance date extension will be immediately effective upon signature of the Administrator pursuant to the APA, 5 U.S.C. 553(d) (1) and (3) for good cause and because it relieves a restriction.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin seeking that USEPA, among other actions, revise the Illinois and Indiana ozone implementation plans in conformance with section 172 (b) and (c) of the CAA (*Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. Sep. 22, 1989). As a result of a court-approved settlement agreement signed by USEPA and the States of Illinois and Wisconsin on September 22, 1989, USEPA agreed to reduce emissions of VOCs, an ozone precursor, by promulgating revision to the VOC RACT rules contained in the Illinois State Implementation Plan (SIP) for ozone.

The settlement agreement set a tight deadline for the completion of the rulemaking, requiring USEPA to promulgate final revisions to correct the VOC RACT rules in the Illinois SIP by March 18, 1990. While that date was later extended to June 8, 1990, it left USEPA with little time to complete an especially demanding and complex task.[1] On June 29, 1990, USEPA promulgated final Federal rules (55 FR 26814) requiring RACT to control the emission of VOCs in six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

Ten petitions for review of USEPA's June 29, 1990, revisions to the Illinois SIP were filed in and consolidated by the United States Court of Appeals for the Seventh Circuit, as a result of certain motions and court orders; five of the petitions have been severed in whole or in part from the consolidated case,[2] *Illinois Environmental Regulatory Group ("IERG"), et al.* v. *Reilly*, No. 90–2778. In addition, Reynolds, initially a petitioner, was subsequently granted intervenor status at its request.

Today's action deals with the five parties remaining in the consolidated case *IERG* v. *Reilly* (No. 90–2778), with GM; and with Duo-Fast and Stepan.[3] These parties are the only sources subject to the federally promulgated RACT rules that have suggested through a challenge to those rules that the July 1, 1991, compliance date is unreasonable (and that they, therefore, need a short extension of the compliance date), and for whom USEPA has not agreed to reconsider the rules. Hence, as to the identified rules for these parties, USEPA is extending the compliance date for 60 days, until August 30, 1991, a *de minimis* time period.

This 60-day compliance date extension is not inconsistent with the Clean Air Act Amendments of 1990 (CAAA), Public Law 101–549, 104 section 2399. The amended CAA includes a provision, section 193, 42 U.S.C. 7515, that requires areas seeking revisions to a SIP (or, as in this instance, federally promulgated revisions) to assure that the plan will achieve "equivalent" emission reductions. Equivalent reductions must occur during the same time period in which it would have been reasonable for the area to comply with the implementation plan. USEPA recognizes, however, that this may not be feasible, in all instances. As a result, under the power granted in section 301(a), of the CAA, USEPA has interpreted the statute to allow for a *de minimis* exception. *Cf. Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360 (DC Cir. 1980). In the present case, USEPA is extending the compliance date for specific sources for a minimal period.[4] The administrative burden required to produce equivalent emission reductions for the 60-day period, and for establishing those new limits through a rulemaking procedure, greatly outweighs the minimal benefit received under the present circumstance. Stated differently, since the time of extension is so limited, the equivalent reductions that could be achieved during the extension period are so minimal that they cannot justify the Agency's efforts in attempting to achieve them; therefore, the Agency is justified in allowing this *de minimis* exception from the statutory design. See *Id.; District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (DC Cir. 1968).

II. The Compliance Date Extension

The time for complying with the rules promulgated by USEPA on June 29, 1990, as RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area is extended for 60

[1] For example, the rulemaking established regulatory requirements governing the emissions of approximately 1000 sources. In addition, USEPA reviewed approximately four linear feet of public comments prior to promulgation of the final rule.

[2] On December 7, 1990, the Court granted a joint motion for severance and deferred briefing for Minnesota Mining and Manufacturing Company (3M). 3M challenged the RACT rules as they applied to the emission of perflouro-carbons. In the final RACT rulemaking, USEPA provided that the RACT rules to the extent that they applied to those emissions, would not apply until "one year from the date USEPA acts on 3M's petition" (55 FR at 26844, 26863). USEPA has not yet taken action on that petition.

On November 2, 1990, USEPA filed a motion to hold briefing in abeyance for certain issues related to three of the petitioners: GM, Viskase Corporation and Allsteel. In that motion USEPA represented to the Court its intent to undertake an administrative stay and reconsideration for particular sources of air emissions at those petitioners' facilities. On December 7, 1990, the Court granted USEPA's motion to hold briefing in abeyance and severed the appeals for GM, Viskase and Allsteel from the consolidated action. On December 20, 1990, the Court clarified its order with regard to Allsteel, such that Allsteel's appeal remained with the consolidated actions for purposes of briefing the issues not covered by USEPA's November 2, 1990, motion (i.e., issues not related to Allsteel's adhesive lines). On January 4, 1991 (56 FR 460), USEPA announced a 3-month partial stay and reconsideration of some of the June 29, 1990, RACT rules for the General Motors, Viskase, and Allsteel. At that time, USEPA also proposed to extend the stay beyond the 3-month period, if and as necessary to complete reconsideration of the subject rules.

On March 1, 1991, the Court granted USEPA's unopposed motion for expedited severance of petitions and to hold in abeyance the briefing schedule for petitioners Duo-Fast and Stepan. USEPA is currently in the process of issuing a three-month administrative stay of the applicable rules and compliance dates pursuant to section 307(d)(7)(B) for Duo-Fast and Stepan. Moreover, the Agency will be proposing to temporarily stay the effectiveness of the applicable rules and compliance dates beyond the three months for those facilities if and as needed to complete consideration of their Petitions for Reconsideration.

[3] This 60-day compliance date extension applies to those two companies to Stepan and Duo-Fast only to the extent that USEPA does not complete its source-specific rulemaking before July 1, 1991.

[4] USEPA further notes that the original compliance period of one year was a relatively short period. Even with the sixty-day compliance date extension, the compliance period remains relatively short.

days until August 30, 1991 for (1) IERG, including its member companies; (2) Allsteel; (3) Riverside; (4) Printing Industry of Illinois/Indiana, including its member companies, and R.R. Donnelley & Sons Company; (5) Reynolds; (6) GM; (7) Duo-Fast; and (8) Stepan.

III. Issuance of Compliance-Date Extension and Purpose

USEPA hereby issues a 60-day compliance date extension for compliance with the June 29, 1990, federally-promulgated VOC RACT rules as they pertain to the eight parties identified above. The purpose of this compliance date extension is to provide a *de minimis* amount of time that is necessary for these parties to comply with the RACT rules.

IV. Authority for Compliance-Date Extension and Reconsideration

The compliance date extension announced by this notice is being undertaken pursuant to section 307(d)(1)(B) of the CAA, 42 U.S.C. 7607(d)(1)(B). However, USEPA has determined that the good cause exception to notice-and-comment rulemaking applies.

The CAA establishes the administrative procedure for certain types of actions taken pursuant the CAA, including federally promulgated implementation plan revision actions (section 307(d), 42 U.S.C. 7607(d)). For these actions, the CAA provides a comprehensive set of procedures for rulemaking which expressly displaces the requirement to comply with many of the rulemaking provisions of the APA. One provision that still applies, however, is provision concerning exceptions from following the notice-and-comment requirement, 5 U.S.C. 553(b) (A) and (B). Under section 553(b)(B), an agency may dispense with the notice-and-comment procedure in a rulemaking upon a good cause finding that the procedure is "impracticable, unnecessary, or contrary to the public interest."

Notice and comment in the present proceeding is impracticable. It is impracticable for the Agency to provide notice and accept comment due to the imminent approach of the original compliance date. See *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F. 2d 573, 581 (DC Cir. 1981). Since the deferred compliance date is for a relatively short period of time, and USEPA fully expects the new compliance date to remain in effect, USEPA may justifiably forego notice and comment. *Id.* Since the Administrator finds good cause for not providing notice and an opportunity for comment, USEPA is issuing the extension today as a final rule. Further, this compliance date extension will be immediately effective upon signature of the Administrator pursuant to the APA, 5 U.S.C. 553(d) (1) and (3) for good cause and because it relieves a restriction.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Identification of Document: 60-Day Compliance Date Extension of the June 29, 1990 federally promulgated RACT rules as they pertain to certain parties in *IERG* v. *Reilly*.

Dated: July 1, 1991.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart O—Illinois

2. Section 52.741, is amended by adding paragraph (z)(2) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, Dupage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(z) * * *

(2) Compliance with all of 40 CFR 52.741 is stayed for 60 days (July 1, 1991 until August 30, 1991) as it pertains to the following parties; the Illinois Environmental Regulatory Group including its approximately 40 member firms; Allsteel, Incorporated; Riverside Laboratories, Incorporated; the Printing Industry of Illinois/Indiana Association including its member firms, and R.R. Donnelley & Sons Company; the rules applicable to General Motors Corporation; Reynolds Metals Company; Stepan Company; and Duo-Fast Corporation. Final compliance for these parties is extended 60 days from July 1, 1991 until August 30, 1991.

[FR Doc. 91–16491 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL 3972–4]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of stay and reconsideration (IL 12–5–5133).

SUMMARY: Today's action announces a 3-month stay of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of the following rules, including the applicable compliance dates, is stayed for 3 months pending reconsideration: (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's (Duo-Fast) "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's (Stepan) manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741(w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741(w)(4)). USEPA is issuing this stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule during reconsideration.

Elsewhere in the Proposed Rules section of today's **Federal Register**, USEPA proposes, under CAA sections 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1), to temporarily stay the effectiveness of these rules and applicable compliance dates beyond the 3 months provided by this stay, but only if and as long as necessary to complete reconsideration of the rules in question.

EFFECTIVE DATE: Effective July 23, 1991, the following rules and applicable compliance dates are stayed until October 23, 1991: (1) Emission limitations and standards for the miscellaneous metal parts and products coating operations only as applied to Duo-Fast's "power driven metal

fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, to be codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, to be codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan's manufacturing facility near Millsdale, Illinois (55 FR at 26884, to be codified at 40 CFR 52.741(w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, to be codified at 40 CFR 52.741(w)(4)).

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin seeking that USEPA, among other actions, revise the Illinois and Indiana ozone implementation plans in conformance with section 172 (b) and (c) of the CAA (*Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. Sept. 22, 1989). As a result of a Court approved settlement agreement, signed by USEPA and the States of Illinois and Wisconsin on September 22, 1989, USEPA agreed to reduce emissions of VOCs, an ozone precursor, by promulgating revisions to the VOC RACT rules contained in the Illinois State Implementation Plan (SIP) for ozone.

The settlement agreement set a tight deadline for the completion of the rulemaking, requiring USEPA to promulgate final revisions to correct the VOC RACT rules in the Illinois SIP by March 18, 1990. While that date was later extended to June 8, 1990, it left USEPA with little time to complete an especially demanding and complex task.[1] On June 29, 1990, USEPA promulgated final federal rules (55 FR 26814) requiring RACT to control the emission of VOCs in six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

Subsequently, ten petitions for review of USEPA's June 29, 1990, revisions to the Illinois SIP were filed in the United States Court of Appeals for the Seventh Circuit. Duo-Fast and Stepan, the two parties directly affected by today's action, were among those filing petitions for review. On September 13, 1990, the Court, on its own motion, consolidated the ten petitions as *Illinois Environmental Regulatory Group ("IERG"), et al.* v. *Reilly*, No. 90–2778. Since then, a number of other motions have been filed with the Court. Among these is a motion USEPA filed on February 14, 1991, to expedite severance of the petitions filed by Duo-Fast and Stepan and to hold briefing in abeyance for the issues addressed in today's action. In that motion USEPA represented to the Court its intent to undertake the administrative stay and reconsideration that is the subject of the Agency action herein. In addition to filing their petitions for review in the Seventh Circuit, both of the parties directly affected by today's action have requested some form of administrative relief from the Agency. Duo-Fast filed a petition for reconsideration on November 27, 1990. Stepan requested, by letter of October 22, 1990, that USEPA reconsider its rule. After review of these parties' requests, USEPA is, by today's action, convening a proceeding for reconsideration of the rules for the reasons discussed below.

II. Rules to be Stayed and Reconsidered

Stepan and Duo-Fast have questioned whether USEPA complied with certain procedural requirements in promulgating the federal RACT rules within the time frame afforded by the settlement agreement. USEPA intends to reconsider certain rules in light of issues raised by these two petitioners, as described below.[2]

A. Duo-Fast Corporation

In Duo-Fast's November 27, 1990, petition for reconsideration, it stated that it had submitted written comments during the comment period on the proposed rule, but that USEPA had not considered those comments. However, Duo-Fast conceded that it had not submitted its comments to the individual specified in the notice of proposed rulemaking during the comment period. Because of this error, the appropriate USEPA officials were unaware that Duo-Fast had submitted written comments until several months after the final rule was promulgated. It was not until late October 1990, when counsel for Duo-Fast telephoned the USEPA counsel, that the appropriate USEPA officials became aware that Duo-Fast had attempted to file those comments. In Duo-Fast's reconsideration papers, it requested that USEPA review these misfiled comments, and reconsider the portions of the challenged rule affecting Duo-Fast in light of those comments. USEPA has determined that although Duo-Fast erred by not properly filing its comments, the comments are significant, warranting further review and response, pursuant to section 307(d)(6)(B) of the CAA. Accordingly, USEPA intends to evaluate Duo-Fast's comments and, if appropriate, to revise the emission limitations applicable to Duo-Fast's manufacturing facility in Franklin Park Illinois.

B. Stepan Company

By letter of October 22, 1990, Stepan requested that USEPA reconsider its rule as applicable to Stepan, on the basis that USEPA had not adequately responded to certain comments. More specifically, Stepan had sought to demonstrate in its comments that certain emission sources at its plant were *de minimis* and should be exempt from the proposed emissions control requirements in proposed 40 CFR 52.741(w). In response to Stepan's comments, USEPA clarified that storage tanks at the Stepan plant were exempt from 40 CFR 52.741 of the final rule. After reviewing Stepan's request for reconsideration, USEPA has concluded that Stepan's comments did not adequately reflect its position that not only its storage tanks, but also its "process vent" sources with low emission levels should be exempted from the control requirements in § 52.741(w). USEPA now intends to evaluate Stepan's comments in light of its clarified position and, if appropriate, to revise emission limitations applicable to Stepan's manufacturing facility, following the applicable notice and comment procedures of section 307(d) of the CAA. As part of that process, USEPA plans to conduct a detailed, site-specific analysis at Stepan's plant to determine the appropriate control requirements for its emissions sources.

III. Issuance of Stay

USEPA hereby issues a 3-month administrative stay of the effectiveness of the following rules, including the applicable compliance dates, promulgated as final federal rules requiring RACT to control VOCs in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990): (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast's "power-driven metal fastener" manufacturing

[1] For example, the rulemaking established regulatory requirements governing the emissions of approximately 1000 sources. In addition, USEPA reviewed approximately four linear feet of public comments prior to promulgation of the final rule.

[2] By staying these rules and convening a proceeding for reconsideration, USEPA in no manner concedes that it violated any provision of the Clean Air Act or the Administrative Procedure Act.

facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan's manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741(w)(3)) as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741(w)(4)). USEPA will reconsider these rules, as discussed above. If the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of 1 year from the date of final action on reconsideration. Note that a 1-year compliance period was the general compliance period provided in the federal RACT rules promulgated June 29, 1990 (55 FR at 26814). As a general matter, USEPA will provide an adequate period for compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure, as described above, that the affected parties are not unduly prejudiced by the Agency's reconsideration.

USEPA recognizes the interests of the State of Wisconsin in this matter [3] The regulatory requirements that will be stayed, pursuant to today's action, were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. See Background discussion above. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practible.

IV. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the rules and associated compliance periods announced by this notice are being undertaken pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for 3 months during reconsideration of the rulemaking action.

V. Proposed Additional Temporary Stay

USEPA may not be able to complete the reconsideration (including any appropriate regulatory action) of the rules stayed by this notice within the 3-month period expressly provided in section 307(d)(7)(B). If USEPA does not complete the reconsideration in this time frame then the Agency will extend temporarily the stay of the effectiveness of the emission limitations and applicable compliance dates until USEPA completes final rulemaking action upon reconsideration. In the Proposed Rules Section of today's **Federal Register**, USPEA proposes a temporary extension of the stay beyond the 3 months provided, only if and as long as necessary to complete reconsideration of the rules in question.

Under Executive Order 12291 this action is not "major". It has been submitted to the Office of Management and Budget for Review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Identification of Document: Notice of a 3-month Stay of portions of the Chicago Federal Implementation Plan as they pertain to Duo-Fast Corporation and Stepan Company.

Dated: July 1, 1991.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being amended as follows:

Subpart O—Illinois

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.741 is amended by adding paragraph (3) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(z) * * *

(3) Compliance with the following rules are stayed from July 23, 1991 to October 23, 1991:

(i) 40 CFR 52.741(e)(1)(i)(J) and 40 CFR 52.741(e)(5) only as they apply to Duo-Fast Corporation's Franklin Park, Illinois "power-driven metal fastener" manufacturing facility, and

(ii) 40 CFR 52.741(w)(3) and (4) only as they apply to Stepan Company's miscellaneous organic chemical manufacturing processes at its manufacturing facility located near Millsdale, Illinois.

[FR Doc. 91–16492 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–M

[3] USEPA representatives have conferred with representatives of the Wisconsin Attorney General's office regarding the possible need for USEPA to undertake reconsideration of the regulatory requirements applicable to the two parties in question here.

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40 CFR Part 52

[FRL–3975–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Missouri has promulgated a regulation requiring any person responsible for a source of emission of air contaminants anywhere in the state to make or have made tests to determine the quantity and/or nature of emissions of air contaminants from the source at the request of the Director of the Missouri Department of Natural Resources. This rule broadens the authority of the director in matters of air pollution control strategies allowing the director to maintain a current emission inventory. In addition, this rule expands the capabilities of the state to enforce emission regulations.

DATES: This action will be effective September 23, 1991, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrechts at (913) 551–7846 (FTS 276–7846).

SUPPLEMENTARY INFORMATION:

Background

The promulgation of rule 10 CSR 10–6.180 gives the director authority to order sources of air contaminants to test and report their emissions. This new rule provides that the director may require any person responsible for the source of emission of air contaminants

to make or have made tests to determine the quantity and/or nature of emission of air contaminants from the source. The director may further specify testing methods to be used in accordance with good professional practice.

All tests are to be conducted by reputable, qualified personnel.

The state of Missouri published the proposed rule in the August 15, 1990, **Missouri Register**. Proper notice was published and a hearing was held on September 27, 1990, at a Missouri Air Conservation Commission (MACC) meeting. The MACC formally adopted this rule on November 19, 1990. The final rulemaking was submitted to EPA on March 4, 1991.

EPA Action

EPA approves Missouri's adoption of the rule providing authority to the Director to order measurements of emissions of air contaminants as meeting the requirements of section 110 of the Clean Air Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 23, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1991.

Under 5 U.S.C. 605(b), the Regional Administrator certifies that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific, technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedure published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, and Reporting and recordkeeping requirements.

Dated: June 28, 1991.

Morris Kay,

Regional Administrator.

40 CFR part 52 is amended as follows:

Subpart AA—Missouri

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding paragraph (c)(78) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(78) The Missouri Department of Natural Resources submitted new rule 10 CSR 10–6.180, Measurement of Emissions of Air Contaminants, on March 4, 1991.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–6.180 entitled "Measurement of Emissions of Air Contaminants" published November 19, 1990, effective December 31, 1990.

[FR Doc. 91–17389 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3976–4]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Prevention of Significant Deterioration Nitrogen Dioxide Increment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This notice approves State Implementation Plan (SIP) revisions submitted by the State of Oklahoma. These revisions adopt Prevention of Significant Deterioration (PSD) nitrogen dioxide (NO_2) increments and related requirements. The intended effect of this action is to approve revisions to the PSD program to implement the NO_2 increments in the State of Oklahoma in accordance with 40 CFR 51.166.

EFFECTIVE DATE: This action will become effective on September 23, 1991, unless notice is received by August 22, 1991, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section of the EPA Region 6, Air Programs Branch (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Robin M. Sullivan, telephone (214) 655–7214 or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act to prevent significant deterioration of air quality from emissions of nitrogen oxides. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration. These maximum allowable increases are called "increments". The minimum Federal requirements for the PSD NO_2 increment program (effective October 17, 1989) are set forth in 40 CFR 51.166. State PSD programs must meet all of these requirements. The intended effect of these regulations is to require all applicants for major stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, to restrict emissions so as not to cause or contribute to exceedances of

the increment. The Oklahoma PSD program was originally approved by EPA on August 25, 1983 (48 FR 38635).

II. Oklahoma's PSD NO_2 Increment Program

On November 14, 1990, the Governor of Oklahoma submitted revisions to Regulation 1.1 "Defining Terms Used in Oklahoma Air Pollution Control Regulations", Regulation 1.2 "Oklahoma Air Quality Standards and Increments", and Regulation 1.4 "Permits". A detailed description of these changes and EPA's evaluation of their consistency with Federal regulations is found in the accompanying technical support document, titled "Technical Support Document—State of Oklahoma Prevention of Significant Deterioration (PSD) Nitrogen Dioxide (NO_2) Increment". Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice. A summary of the amendments to Regulation 1.1, 1.2 and 1.4 follows.

Regulation 1.1 revised the definitions of Baseline Area, Baseline Concentration, Baseline Date and Net Emissions Increase to be consistent with the Federal definitions found in 40 CFR 51.166. The EPA's review of the definitions of Baseline Date and Baseline Concentration found a few minor inconsistencies with the Federal definitions. In the definition of Baseline Concentration, both in Regulation 1.1(b)(15)(B)(i) and Regulation 1.4.4(b)(13)(B)(i), the word "stationary" was omitted between the words "major" and "source". In the definition of Baseline Date, both in Regulation 1.1(b)(16)(B)(ii) and Regulation 1.4.4(b)(14)(B)(ii), the words "nitrogen oxides" were used instead of "nitrogen dioxide".

These minor inconsistencies were determined to be not operationally significant. EPA has determined that these minor inconsistencies should not delay approval of these revisions, as long as the State committed to make the necessary changes. Thus, EPA requested the State to submit a letter which: (1) Commits that the State will make the requested changes at the earliest possible date, but not later than one year from the date of receipt of EPA's request; and (2) describes the State's interpretation of the above definitions. That is, that the State interprets "major source", in this case, to mean a "major stationary source", and "nitrogen oxides", in this case, to actually mean "nitrogen dioxide", and that these definitions will be implemented as such.

On April 23, 1991, Mr. John Drake, Chief, Oklahoma Air Quality Service, sent a letter to Mr. A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, stating that the Air Quality Service (AQS) will ask the Oklahoma Air Quality Council to revise "major source" in these sections to "major stationary source" at the earliest hearing available. The AQS intends for "major source" to mean "major stationary source" as defined in Regulation 1.4.4(b)(1). The State noted that the "nitrogen oxide" discrepancy was a scrivener error, and committed to correct this error at the next printing of the regulation. This commitment letter from the State is incorporated into the SIP as "Additional Material" in today's notice.

Regulation 1.2, Table 1.2(2), adds the maximum allowable nitrogen dioxide increments (annual arithmetic means) of 2.5 $\mu g/m^3$ for Class I areas, 25 $\mu g/m^3$ for Class II areas, and 50 $\mu g/m^3$ for Class III areas.

Various changes were made to Regulation 1.4.1 and 1.4.2 related to the permitting program. These revisions were determined to be consistent with Federal requirements and, thus, approvable. Regulation 1.4.1(a) was amended to add provisions for issuance of relocation permits to portable sources, and special, temporary or research/experimental permits, and provisions for permittee requests for permit modifications. Regulation 1.4.1(b)(3)(C) adds a provision that a permit is not required for a new or modified source that proves to the Commissioner's satisfaction that, as well as the criteria that emissions of any criteria pollutant will not exceed one pound per hour and emissions of toxics will not exceed the de minimus levels, it is not subject to a New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAP) effective at the time. Regulation 1.4.2(a)(2)(ii) adds a definition of Minor Source. Regulation 1.4.2(c)(1) adds a provision that the permit application shall include the appropriate permit application fee. Regulation 1.4.2(c)(2) adds the provision that the supplemental data included with the application form shall include, among other things, a Best Available Control Technology (BACT) determination.

In Regulation 1.4.4(b), "Major Sources—Prevention of Significant Deterioration Requirements for Attainment Areas—Definitions", the definitions of Net Emissions Increase, Baseline Concentration, Baseline Date and Baseline Area, were revised for consistency with the Federal definitions found in 40 CFR 51.166. Regulation 1.4.4(d)(12)(B) was added; this provision exempts sources that submitted a complete permit application before February 8, 1988, from conducting NO_2 increment analysis. Regulation 1.4.4(d)(13) was revised to include nitrogen dioxide in the provisions for excluding temporary emissions from increment consumption.

EPA has evaluated the State's submittal in accordance with the Federal requirements and finds the submittal acceptable. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 23, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1991.

Final Action

EPA is taking final action to approve the revisions to Regulation 1.1, 1.2 and 1.4 that were submitted by the Governor on November 14, 1990. These revisions adopt the PSD NO_2 increment requirements of 40 CFR 51.166.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by September 23, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the adoption of the revision by the State preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Note: Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: July 15, 1991.

Robert E. Layton, Jr.,

Regional Administrator.

Accordingly, 40 CFR part 52, subpart LL, is amended as follows:

Subpart LL—Oklahoma

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1920 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(41) On November 14, 1990, the Governor submitted revisions to Oklahoma Air Pollution Control Regulation (Regulation) 1.1 "Defining Terms Used in Oklahoma Air Pollution Control Regulations", Regulation 1.2 "Oklahoma Air Quality Standards and Increments", and Regulation 1.4 "Permits". These regulations were adopted by the Oklahoma Air Quality Council on April 3, 1990, and by the Oklahoma Board of Health on April 12, 1990. These regulations became effective when they were signed by the Governor as emergency rules on June 4, 1990.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Air Pollution Control Regulation 1.1, Regulation 1.2, and Regulation 1.4, as adopted by the Oklahoma Air Quality Council on April 3, 1990, by the Oklahoma Board of Health on April 12, 1990, and became effective on June 4, 1990: Oklahoma Air Pollution Control Regulations 1.1(b)(13), 1.1(b)(14), 1.1(b)(15), 1.1(b)(16), 1.1(b)(82)(D), 1.2—Table 1.2(2), 1.4.1(a)(1), 1.4.1(b)(3)(B), 1.4.1(b)(3)(C), 1.4.2(a)(2)(ii), 1.4.2(c), 1.4.2(h)(2), 1.4.4(b)(3)(D), 1.4.4(b)(13), 1.4.4(b)(14), 1.4.4(b)(15) and 1.4.4(d)(12), 1.4.4(d)(13)(C).

(ii) Additional material.

(A) April 23, 1991, letter from Mr. John Drake, Chief, Air Quality Service, Oklahoma State Department of Health, to Mr. A. Stanley Meiburg, Director, Air, Pesticides & Toxics Division, EPA, Region 6.

[FR Doc. 91–17390 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL 3976–9]

Indiana: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of a revision to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Indiana to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA"). Indiana's application for program revision is available for public review and comment.

EFFECTIVE DATES: Final authorization for Indiana's application shall be effective September 23, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on Indiana's final authorization must be received by 4:30 p.m. on August 22, 1991.

ADDRESSES: Copies of Indiana's program revision application are available for inspection and copying, from 8:30 a.m. to 4:30 p.m., at the following addresses: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206. Contact: Michael Dalton (317) 232–8884; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, phone (202) 382–5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604. Contact: George Woods (312) 886–6134. Written comments on Indiana's application should be sent to George Woods, at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604 (312) 886–6134, (FTS 886–6134).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least 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 allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), 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 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program on January 31, 1986 (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program effective December 31, 1986

(51 FR 39752–39754, October 31, 1986), January 19, 1988 (53 FR 128–129, January 5, 1988), and September 11, 1989 (54 FR 29557–29559, July 13, 1989). On April 26, 1988, Indiana submitted a program revision application seeking authorization for an additional revision to its authorized program. Today, Indiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

This program revision is the result of State initiated modifications to its RCRA program regulatory authority which were made to bring certain regulations into conformity with Statutory changes enacted by the 1987 session of the Indiana General Assembly. Additionally, the Indiana Department of Environmental Management (IDEM) amended certain rules to correct deficiencies in enforcement procedures discovered during the course of enforcement activity carried out since the original rules were promulgated. The State initiated amendments included changes to administrative procedures, interim status standards, and closure.

On March 25, 1988, the Indiana Attorney General (A.G.) certified that these program revision changes did not impact the State's previous status of being "at least equvalent and no less stringent" than the parallel Federal program and, that they did not affect the IDEM's authority to implement the State's authorized RCRA program. EPA concurs with the Indiana A.G.'s certification for this program revision, and with his assessment that the changes should provide greater strength and clarity to State enforcement when dealing with interim status facilities.

EPA has reviewed Indiana's application and has made an immediate final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfies all requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization to Indiana for the additional modifications to its authorized program. The public may submit written comments on EPA's immediate final decision up until August 22, 1991. Copies of Indiana's application for this program revision are available for inspection at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana'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.

Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which were modified and originally codified at title 320, article 4, rule 1 (320 IAC 4.1) of the Indiana Administrative Code, effective April 3, 1988. Because Indiana's hazardous waste management rules found at 320 IAC 4.1, were repealed and simultaneously recodified at title 329, article 3 (329 IAC 3) of the Indiana Administrative Code, effective July 1, 1988, the modified rules are designated herein under the recodified citations and have the 329 IAC 3 prefix. These recodified State rules are being recognized as analogous to the following provisions of the Federal program found at title 40 of the Code of Federal Regulations:

Federal requirement	Former IAC regulation	Recodified IAC regulation
40 CFR 260.11	320 IAC 4.1-1-6	329 IAC 3-1-6
40 CFR 260.10	320 IAC 4.1-1-7	329 IAC 3-1-7
40 CFR 265.1	320 IAC 4.1-15-1	329 IAC 3-15-1
40 CFR 265.112	320 IAC 4.1-21-3	329 IAC 3-21-3
40 CFR 265.147	320 IAC 4.1-22-24	329 IAC 3-22-24
40 CFR 264.151(g)	320 IAC 4.1-22-32	329 IAC 3-22-32
40 CFR 264.151(h)(2)	320 IAC 4.1-22-33.1	329 IAC 3-22-34
40 CFR 270.2	320 IAC 4.1-33-2	329 IAC 3-33-2
40 CFR 270.6	320 IAC 4.1-33-5	329 IAC 3-33-5
40 CFR 270.70	320 IAC 4.1-38-1	329 IAC 3-38-1
40 CFR 270.73	320 IAC 4.1-38-4	329 IAC 3-38-4
40 CFR 124.1	320 IAC 4.1-39-1	329 IAC 3-39-1
40 CFR 124.3	320 IAC 4.1-39-2	329 IAC 3-39-2
40 CFR 124.5	320 IAC 4.1-39-3	329 IAC 3-39-3
40 CFR 124.6	320 IAC 4.1-39-4	329 IAC 3-39-4
40 CFR 124.10	320 IAC 4.1-39-6	329 IAC 3-39-6
40 CFR 124.12	320 IAC 4.1-39-8	329 IAC 3-39-8
40 CFR 124.17	320 IAC 4.1-39-9	329 IAC 3-39-9
40 CFR 270.50	320 IAC 4.1-39-11	329 IAC 3-39-11
40 CFR 270.51	320 IAC 4.1-39-12	329 IAC 3-39-12
40 CFR 264.147	320 IAC 4.1-47-8	329 IAC 3-47-8
40 CFR 264.151	320 IAC 4.1-47-10	329 IAC 3-47-10

C. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. In a future **Federal Register** notice, EPA will codify Indiana's revised hazardous waste program.

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 Indiana'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.

Paperwork Reduction Act: Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

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 and 6974(b)).

Dated: November 27, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-17469 Filed 7-22-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 38

RIN 1090-AA31

Pay of U.S. Park Police; Interim Geographic Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (DOI) is issuing regulations on interim geographic pay adjustments for certain U.S. Park Police as authorized by section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and the President's memorandum dated May 21, 1991. The regulations establish rules for applying these adjustments to U.S. Park Police officers stationed in the following Consolidated Metropolitan Statistical Areas (CMSAs): New York-Northern New Jersey-Long Island, NY-NJ-CT and San Francisco-Oakland-San Jose, CA.

EFFECTIVE DATE: This final rule is effective on the first date of the first pay period beginning on or after December 12, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Coulter (202) 208-5284.

SUPPLEMENTARY INFORMATION: Section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990) authorized the President, at his discretion to establish interim geographic adjustments of up to 8 percent of basic pay in one or more consolidated metropolitan statistical areas (CMSAs), primary metropolitan statistical areas (PMSAs), and/or metropolitan statistical areas (MSAs) that meet certain criteria. On December 12, 1990, the President issued Executive Order 12736, establishing interim geographic adjustments of 8 percent in three CMSAs and authorizing OPM to prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, interim geographic adjustment shall be payable to employees receiving special salary rates.

The President's memorandum dated May 21, 1991 authorized the Secretary of the Interior to prescribe regulations establishing interim geographic pay adjustments for the U.S. Park Police consistent with the regulations and determinations prescribed under section 5(b)(1) of Executive Order 12736 of December 12, 1990.

The CMSAs in which interim geographic adjustments have been authorized by the President for U.S. Park Police are New York-Northern New Jersey-Long Island, NY-NJ-CT and San Francisco-Oakland-San Jose, CA. These CMSAs are defined as set forth below.

The New York-Northern New Jersey-Long Island, NY-NJ-CT CMSA consists of Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester, Orange, Nassau, and Suffolk counties in New York; Bergen, Passaic, Hudson, Hunterdon, Middlesex, Somerset, Monmouth, Ocean, Essex, Morris, Sussex, and Union Counties in New Jersey; and in Connecticut—(1) The following parts of Fairfield County; the towns of Easton, Fairfield, Monroe, Stratford, Trumbull, Bethel, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Sherman, Weston, Westport, Wilton, Darien, Greenwich, New Canaan; and the cities of Bridgeport, Shelton, Danbury, Norwalk, and Stamford; (2) the towns of Beacon Falls, Oxford, and Seymour and the cities of Ansonia, Derby, and Milford in New Haven County; and (3) the towns of Bridgewater and New Milford in Litchfield county.

The San Francisco-Oakland-San Jose, CA CMSA consists of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma, Napa, and Solano counties.

Under the regulations, a U.S. Park Police Officer in either of the two CMSAs will be entitled to an adjustment of 8 percent as described below.

The statute provides that adjusted rates of pay will be considered basic pay for purposes of computing retirement deductions and benefits, life insurance premiums and benefits, and premium pay. The regulations provide that the adjusted rates also will be considered basic pay for the purpose of computing an employee's entitlement to severance pay. Finally, the regulations prescribe methods for deriving annual, hourly, biweekly, and daily adjusted rates of basic pay consistent with the requirements for computing rates of basic pay.

Pursuant to section 553(b) (B) and (d) (3) of title 5, United States Code, I find that request for public comment is unnecessary due to the extremely limited effect of the rule and the need to provide the U.S. Park Police interim geographic pay adjustments similar to those provided to general schedule employees in these locations. I also find that good cause exists for making this rule effective in less than 30 days. The 30-day delay in the effective date is being waived because the effective date of the adjusted rates of pay is established, pursuant to the President's May 21, 1991 memorandum, as the first pay period beginning on or after December 12, 1990.

E.O. 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule as defined under E.O. 12291 and certifies that this document will not have a significant economic impact on a substantial number of small entities because it applies only to a single Federal agency and an estimated 108 employees.

Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 38

Government employees, Wages, Administrative practice and procedure.

Accordingly, DOI is adding a new part 38 to title 43 of the Code of Federal Regulations to read as follows:

PART 38—PAY OF U.S. PARK POLICE—INTERIM GEOGRAPHIC ADJUSTMENTS

Sec.
38.1 Definitions.
38.2 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.
38.3 Administration of adjusted rates of pay.

Authority: 104 Stat. 1462.

§ 38.1 Definitions.

In this subpart: *Adjusted annual rate of pay* means an employee's scheduled annual rate of pay multiplied by 1.08 and rounded to the nearest whole dollar, counting 50 cents and over as a whole dollar.

Employee means a U.S. Park Police officer whose official duty station is located in an interim geographic adjustment area.

Interim geographic adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSAs) as defined by the Office of Management and Budget (OMB).

(1) New York-Northern New Jersey-Long Island, NY-NJ-CT; and

(2) San Francisco-Oakland-San Jose, CA.

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(1) The U.S. Park Police rate of basic pay for the employee's rank and step, exclusive of additional pay of any kind;

(2) A retained rate of pay, where applicable, exclusive of additional pay of any kind.

§ 38.2 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the adjusted annual rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 38.3 Administration of adjusted rates of pay.

(a) An employee is entitled to be paid the greater of—

(1) The adjusted annual rate of pay; or

(2) His or her rate of basic pay (including a local special salary rate, where applicable), without regard to any adjustment under this section.

(b) An adjusted rate of pay is considered basic pay for purposes of computing:

(1) Retirement deductions and benefits;

(2) Life insurance premiums and benefits;

(3) Premium pay;

(4) Severance pay;

(c) When an employee's official duty station is changed from a location not in an interim geographic adjustment area to a location in an interim geographic adjustment area, payment of the adjusted rate of pay begins on the effective date of the change in official duty station.

(d) An adjusted rate of pay is paid only for those hours for which an employee is in a pay status.

(e) An adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to an adjusted rate of pay under this subpart terminates on the date.

(1) An employee's official duty station is no longer located in an interim geographic adjustment area;

(2) An employee moves to a position not covered;

(3) An employee separates from Federal service; or

(4) An employee's local special salary rate exceeds his or her adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA, the effective date of a change in an employee's entitlement to an adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of a CMSA is made effective.

(h) Payment of or an increase in, an adjusted rate of pay is not an equivalent increase in pay.

(i) An adjusted rate of pay is included in an employee's "total remuneration," and "straight time rate of pay," for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of an adjusted rate of pay under paragraph (f) of this section is not an adverse action.

Dated: July 17, 1991.

John Schrote,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 91-17444 Filed 7-22-91; 8:45 am]

BILLING CODE 4310-RJ-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1 and 73

Comparative Hearing Process for New Broadcast Applicants; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** at 56 FR 787 (January 9, 1991) where the Commission revised its rules to expedite the comparative hearing process for new broadcast applicants in order to speed service to the public. The Commission has promulgated regulations intended to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-225, published in the January 9, 1991 **Federal Register** on page 787, the following corrections are made in §§ 73.3572 and 73.3573.

1. On page 795, third column, paragraph 18 § 73.3572 is amended by adding new paragraphs (d)(1) and (d)(2) in lieu of (c)(1) and (c)(2).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-17339 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-43; RM-7607]

Radio Broadcasting Services; Portageville and New Madrid, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 292A, reallots the channel from Portageville to New Madrid, Missouri, and modifies the license for Station KMIS-FM to specify New Madrid as the community of license for Channel 293C2. This action is taken in response to a petition filed by New Madrid County Broadcasting Company. See 56 FR 9190, March 5, 1991. The coordinates for Channel 293C2 at New Madrid are 36-25-30 and 89-41-39. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 3, 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. 91-43, adopted July 5, 1991, and released July 17, 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 Missouri, is amended by removing Channel 292A, Portageville and adding Channel 293C2, New Madrid.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-17396 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-7; RM-7592]

Radio Broadcasting Services; Socorro, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don R. Davis and William H. Pace, allots Channel 225A to Socorro, New Mexico, as the community's second local FM service. See 56 FR 4784, February 6, 1991. Channel 225A can be allotted to Socorro in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 34-03-42 and West Longitude 106-53-48. Mexican concurrence has been received since Socorro is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

DATES: Effective September 3, 1991. The window period for filing applications will open on September 4, 1991, and close on October 4, 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. 91-7, adopted July 5, 1991, and released July 17, 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 adding Channel 225A at Socorro.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-17397 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 508, 510 and 549

[APD 2800.12A CHGE 26]

Acquisition Regulation; Implement FAC 90-4

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to delete section 508.602, appropriate coverage is in FAR 8.602; to delete paragraph (a) of section 510.002 and make a minor editorial change to paragraph (b); to delete section 549.001, appropriate coverage of administrative cost is now in section 549.402-7; to revise section 549.402-6 to make a minor editorial change to paragraph (c) and to revise section 549.402-7 to reflect the coverage now appearing in FAR 49.402-7. The intended effect is to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it merely revises the GSAR to conform to the Federal Acquisition Regulation (FAR) as amended by FAC 90-4, which had already undergone the public comment process.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register.**

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Parts 508, 510 and 549

Government procurements.

48 CFR parts 508, 510 and 549 are amended as follows:

1. The authority citation for 48 CFR parts 508, 510 and 549 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

508.602 [Removed]

2. Section 508.602 is removed.

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

3. Section 510.002 is revised to read as follows:

510.002 Policy.

Consistent with the policy expressed in FAR 10.002 (c) and GSA Order ADM 8000.1A, solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. If metric is not the accepted industry system, the head of Central Office Services responsible for nationwide programs shall ensure that policies promoting and encouraging the

use of soft metric, hybrid, or dual systems are developed, except when to do so would be detrimental to the program mission. Whenever possible, commercially developed metric specifications and internationally or domestically developed voluntary standards using metric measurements must be adopted. While an industry is in transition to metric, solicitations must include specifications and purchase descriptions stated in soft metric, hybrid, or dual systems, except when impractical or inefficient.

PART 549—TERMINATION OF CONTRACTS

549.001 [Removed]

4. Section 549.001 is removed.

5. Section 549.402–6 is amended by revising paragraph (c) to read as follows:

549.402-6 Repurchase against contractor's account.

* * * * *

(c) To protect the Government's rights to recover reprocurement costs, the contracting officer must document the file to explain the circumstances of any delay in the reprocurement.

6. Section 549.402–7 is amended by revising paragraphs (a) and (b)(2) to read as follows:

549.402-7 Other damages.

(a) Under the default clause, in addition to assessing reprocurement costs, the contracting officer may assess other damages, including administrative costs (e.g., salaries and fringe benefits paid to Government employees who perform work as a result of the default, preaward survey expense incurred in qualifying reprocurement contractors, and costs incurred in printing and distributing the reprocurement solicitation), if in the best interest of the Government.

(b) * * *

(1) * * *

(2) To support other incurred administrative costs (i.e., travel, per diem, printing and distribution of the repurchase contract), documents may include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

* * * * *

Dated: July 12, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–17404 Filed 7–22–91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSCG-3; Notice No. 6]

[RIN 2130—AA45]

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is today issuing a final rule requiring that railroads report instances of grade crossing signal system failures, file copies of their standards governing the maintenance, testing and inspection of grade crossing signal devices and file one-time grade crossing circuit information reports. Information submitted by railroads as a result of this rule will enable FRA to determine future steps necessary to improve grade crossing signal safety.

EFFECTIVE DATE: In accordance with the Paperwork Reduction Act of 1980, the recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. This rule will become effective on October 1, 1991 if the recordkeeping and reporting requirements have been approved by OMB; if not, a notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bruce George, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Regulatory and Statutory Background

Section 23 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342) amended section 202 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 431, by adding new subsection "q" as follows: "The Secretary shall, within one year after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, orders, and standards as may be necessary to ensure the safe maintenance, inspection, and testing of signal systems at railroad highway grade crossings."

On November 23, 1988, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 47554) regarding grade crossing signal system safety. The purpose of that proceeding was to (1) determine whether Federal regulatory intervention is required to ensure adequate maintenance, inspection, and testing of signal systems and devices at railroad highway-crossings, and (2) determine whether such regulations would be cost beneficial. A public hearing was held on December 19 and 20, 1988 in Washington, DC.

Based on the information developed during the proceeding, a Notice of Proposed Rulemaking (NPRM) was published on September 20, 1990 (55 FR 38707). FRA proposed regulations which would require railroads to report instances of grade crossing signal system failures (both instances in which warning systems failed to activate when a train approached and instances in which warnings activated without the presence of a train). Included in the proposal was a requirement that each railroad file with FRA copies of their standards governing the maintenance, inspection, and testing of grade crossing signal systems. A public hearing on this proposal was held in Washington, DC on November 7, 1990. The final rule issued today is the result of the above proceedings.

FRA's involvement in the issue of Federal standards on maintenance, inspection, and testing of grade crossing safety systems dates to the late 1970's. In 1976, FRA responded to an independent initiative of a joint railroad-labor management committee composed of representatives of the Communication and Signal Section (C&S Section) of the Association of American Railroads (AAR) and the Brotherhood of Railroad Signalmen (BRS) by publishing an Advance Notice of Proposed Rulemaking on June 28, 1976 (41 FR 26580). FRA reviewed accident statistics and concluded that a need for Federal standards could not be demonstrated. FRA, in its notice terminating the rulemaking (43 FR 45903), stated that "installation of more active protection devices would be much more beneficial from the standpoint of safety than a Federal Regulation requiring expenditure of additional resources to maintain and test those devices." *Id.* at 45904.

FRA conducted a second proceeding in 1984 (49 FR 24968) and performed an analysis of accident records similar to that performed in the 1970's. In both the 1976 and 1984 proceedings, the accident data indicated that far fewer than one percent of all grade crossing accidents involved allegations of warning system failures ($\frac{3}{10}$ of 1 percent and $\frac{15}{100}$ of 1 percent, respectively).

Statutory Interpretation

Some parties, including the BRS, assert that FRA has no discretion as to whether to issue regulations regarding the maintenance, inspection, and testing of grade crossing signal systems. The BRS notes, however, that even if FRA has no such discretion, the "strength and nature of such regulations [are] left to the Secretary's discretion."

FRA has concluded that it has discretion under section 23 to determine whether and to what extent rules are necessary. The question is academic, however, since FRA is responding to section 23 with positive action, first with the rule issued today, which requires reporting of system malfunctions and filing of railroad maintenance, inspection, and testing procedures.

Second, as discussed elsewhere in this Notice, FRA is evaluating the need for proposed rules requiring specific railroad actions involving, *inter alia*, prompt response and inspection and testing of grade crossing warning systems upon report of malfunctions.

Overview

This rulemaking proceeding has focused on the issue of maintenance, inspection, and testing of grade crossing warning systems. As discussed in greater detail below, FRA has determined that a need exists for more accurate factual information in order to determine the extent of Federal involvement in establishing requirements for periodic maintenance, inspection, and testing of active crossing warning systems.

We stated in the NPRM that "[b]ecause present reporting regulations only require reporting of the operating status of warning devices when reporting accidents, FRA has no statistics regarding the frequency of grade crossing warning device failures in general [*i.e.*, where no accident occurred despite activation failures and false activations]. Nor can FRA presently determine whether a false restrictive indication was involved in a grade crossing accident." 55 FR 38709. The importance of accurate reporting by the railroads can not be overstated. Only with accurate and appropriate data can FRA determine the status of the nation's grade crossing systems.

We have previously described problems with FRA Form F 6180–57 "Rail-Highway Grade Crossing Accident/Incident Report." Block 32 of that form asks whether the crossing warning device was working at the time of the accident. The choices provided for an answer are only "yes" or "no." Testimony and comments have shown that there is confusion among many railroad employees as to how to indicate certain situations, such as when a railroad vehicle involved in the accident is not designed to shunt a track circuit and thus would not activate a warning system, or if the warning system has been disconnected for maintenance or other reasons. Indeed, we have found that some warning systems have been categorized as "not working" when, in fact, the crossings have been protected by a passive device such as crossbucks.

This would seem to indicate that the statistics FRA does have overstate the involvement of active warning devices in grade crossing accidents. However, that is only one side of the coin. Presently, if a warning system had been operating at the time of an accident but had been operating continuously for hours or even days, an affirmative response would be permissible in response to the question "Was the device operating?" on Form 6180–57. This answer, while technically correct, gives precisely the wrong impression—that the warning system was operating correctly and thus had no involvement in the accident. A major commuter railroad commented that on its system "there has not been an accident, injury or fatality attributable in whole or in part to the malfunctioning of warning devices." This is a correct statement if based solely on whether the system was operating at the time of the accident. Yet during the past three years, two accidents (involving one fatality and six injuries) occurred on that railroad in which the warning gates had been operating (*i.e.*, were in the down position) for an excessive period of time prior to the accident—45 minutes in one case, and two-and-one-half hours in the other. In those cases the malfunctioning warning systems may have been a factor in the crossing accident—a fact that FRA's accident statistics do not uniformly reflect.

The above two situations, one resulting in overreporting of grade crossing involvement in accidents, and the other resulting in underreporting, point up both the lack of reliable data and the need to expand our view as to what truly constitutes a "malfunction" in a crossing warning system.

Although a grade crossing system is operating "as intended" when it activates in a "fail-safe" manner upon the failure of a system component, it is not doing the job for which it was installed—giving a clear warning that a train is approaching and, therefore, that motorists should stay off the tracks. We will refer to this circumstance in this rule as a "false activation." The record makes clear that, if a false activation is permitted to continue for some time, some motorists will drive around the lowered gates and some of them will be injured or killed. We need to determine how often false activations occur and how often they are involved in grade crossing accidents. The rules issued today are intended to provide accurate data in this regard.

It is generally agreed that grade crossing warning systems very rarely fail to warn a motorist of an oncoming train. It appears that the few situations in which there is such a "failure to activate" are mainly due to design errors, or errors in installation or repair, rather than due to component failure. The regulations issued today will help provide reliable information regarding these instances of failure to activate.

While failure to activate is the most obviously dangerous situation concerning grade crossing warning system failure, the vast majority of malfunctioning grade crossing warning systems are "false activations" of the system. Before imposing a regulatory fix on the problem, we need to know the extent and causes of the failures.

The rules issued today are meant to address this problem. Section 234.9(b) requires reporting of instances of false activation when it is determined by the railroad that the cause of the activation was a mechanical or electrical malfunction or misadjustment. Section 234.13 is an information gathering requirement meant to provide sufficient information to FRA of the type of circuit and age of major components of each active crossing so that statistical correlation can be performed against reports of false activations and activation failures. Because reports of false activations will only be reflecting equipment malfunctions rather than activations stemming from operational causes (switching of cars within the approach circuit, maintenance work necessitating interruption of track circuits, etc.) we will be able to correlate accident experience and equipment malfunctions with types of circuits and age of equipment. We will then be better able to pinpoint the causes of crossing system failures and determine whether periodic maintenance, inspection, and testing standards, or other requirements should be required. For instance, if we find that a disproportionate number of system failures are in systems with critical components 30 years old, we are likely to take regulatory steps different than if a disproportionate number of malfunctions occur in relatively new systems on specific railroads.

Supplemental Rulemaking

The information we will receive from the railroad industry pursuant to the rules issued today will enable us to craft better solutions to the problems of crossing device malfunctions. That is the purpose of the final rule issued today. However, FRA can take certain positive and substantive actions while we wait for data to be gathered and analyzed. Whatever the cause of false activations, it is generally accepted that they lead to credibility problems at individual crossings, and to a lesser extent, at grade crossings in general. As discussed in the NPRM, it has been argued by many parties that repeated or lengthy false activations result in the motoring public's losing faith in the warning system. Motorists then attempt to cross the railroad tracks, regardless of flashing lights and lowered gates. Indeed, many commenters advised FRA that the real danger of grade crossing malfunctions lies not with activation failures, but with false activations.

Even if we cannot at this time determine the primary cause of false activations, we can take action to reduce the risks resulting from them. Therefore, FRA is considering issuance in the near future of a Notice of Proposed Rulemaking in which we will propose rules requiring railroads to respond in a timely manner to reports of malfunctioning warning systems and to inspect and test the systems at such time. Included in the proposed rule would be further requirements designed to assure safety at the crossing pending repair of its warning system.

Discussion of Comments

Twenty-four commenters responded to the NPRM, either through testimony or by written comment. Testifying at the public hearing in Washington, DC on November 7, 1990 were representatives of the BRS, the AAR, and the American Short Line Railroad Association (ASLRA). Providing written comments were six railroads (Wisconsin Central, Inc., The New York, Susquehanna and Western Railway Corporation, Southern Pacific Transportation Company, Burlington Northern Railroad, Long Island Railroad, and Consolidated Rail Corporation), two transportation authorities (Southeastern Pennsylvania Transportation Authority and Massachusetts Bay Transportation Authority) and one industry association, the American Public Transit Association. Five state regulatory bodies commented (New York State Department of Transportation (NYSDOT), Railroad Commission of Texas, Arizona Corporation Commission, California Public Utilities Commission and the New Jersey Department of Transportation) as did the police department of the Town of Wallingford, Connecticut.

One Congressman commented on the need for grade crossing regulations in general, while eight other individuals commented in a total of five written submissions. In keeping with FRA's stated policy to consider late filed comments to the extent practicable, FRA has considered all comments submitted through January 11, 1991.

Most commenters were in favor of, or reluctantly agreed with, the need for some level of malfunction reporting. Virtually all commenters favored the filing of a railroad's maintenance, inspection, and testing procedures with FRA. A number of commenters, including the BRS, NYSDOT, and individual commenters took the position that FRA's proposal does not go far enough.

Especially compelling were comments received from seven relatives or friends of people killed in grade crossing accidents. These commenters uniformly questioned why railroad crossing warning systems are permitted to malfunction. Lauren and Larry Zeller expressed the view that "[t]he public has the right to trust the railroad's equipment * * *. How can crossings be left to remain malfunctioning, when school buses and the general public go around their gates over and over." Similarly, Hollis and Pam Crump questioned the purpose of active railroad crossing systems if people cannot rely on them. Doris Hayes questioned "why can't someone make railroads fix their gates. Who is in control of this?"

During hearings on the ANPRM in 1988, the BRS proposed that railroads be required to file their maintenance, inspection, and testing procedures with FRA for its approval. Under that proposal, FRA would enforce the railroad's own procedures. According to the BRS, a railroad's procedures would have to contain provisions for periodic testing and inspection, requirements for responding to malfunctions without undue delay, and site-distance requirements.

FRA rejected this approach in drafting the proposed rules, and we do so again in adopting the rules issued today. Some railroad procedures may be insufficiently rigorous as applied to certain types of installations. In certain other respects, the procedures of individual railroads may specify actions well in excess of minimum safety requirements.

When this proceeding began, we thought the question to be addressed was whether grade crossing accidents could be prevented and lives saved by reducing activation failures through a regime of maintenance, inspection, and testing. The record developed thus far in this proceeding shows no significant correlation among activation failures, which appear to occur extremely rarely; maintenance, inspection, and testing practices; and grade crossing accidents. In the course of this proceeding, however, we have learned that a significant problem of unknown dimension is presented by false activations. This rule will provide the data needed to determine the incidence of false activations for the first time as well as refine our data on activation failures. Those data will provide a record from which we can determine whether activation failures or false activations, or both, can be prevented by Federal standards for maintenance, inspection, and testing and, if so, what those standards should be.

Major Issues

1. Definitions

The AAR suggested that the definition of a grade crossing (section 234.5(a)) be changed to eliminate references to railroad tracks crossing private roadways. The AAR contends that railroads should not be subject to public reporting requirements at private crossings. We are retaining the requirement that reporting include occurrences at private crossings. Present accident reporting regulations at 49 CFR part 225 require reporting of accidents at these crossings. We are retaining the reference to private crossings for the same reason they are included in FRA's accident reporting rules—FRA needs to have a complete safety picture in order to make responsible regulatory decisions. Without comprehensive, reliable data, those decisions can not be made.

FRA specifically requested comments regarding the definitions of "false restrictive" and "false proceed." Not only did we receive comments about the definitions themselves, but we were also told by a number of commenters that the terms themselves should be changed. One commenter felt that the terms were so similar to railroad signalling terminology that they could lead to confusion. Among the suggested replacement terms were "unintended warning indication" and "inappropriate activation failure" in lieu of false restrictive and "warning indication failure" and "failure to activate" instead

of false proceed. We have accepted the suggestions to clarify the terms and have determined that "false activation" rather than "false restrictive" and "activation failure" rather than "false proceed" would best denote the two conditions that will trigger the reporting process.

The AAR, ASLRA, BRS, and a number of railroads suggested changes to the proposed definitions of what are now called "false activation" and "activation failure." The proposed definition of "false activation" (false restrictive indication failure in the NPRM) referred to the activation of a warning system when no train is present. This definition generated perhaps the greatest amount of discussion, both as to the definition itself and its effect on a railroad's reporting burden (§ 234.9(b)). The AAR argued that the definition "indiscriminately groups all warning system activations within the definition, including those which are clearly not system malfunctions." This complaint was echoed by the ASLRA, and virtually every commenting railroad. They pointed out that the proposed definition included activations caused by repair and testing activities, switching moves on an approach circuit, and the presence of non-insulated track maintenance equipment. According to the AAR, even some FRA-required signal tests would cause a false activation requiring reporting.

We agree with those commenters that the definition should be narrowed to include only those activations caused by system malfunctions. We have thus changed the definition of false activation to mean "the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)" The BRS and NYSDOT suggested that the definition be revised to also apply to the situation in which the warning system remains activated after a train has passed through the crossing. The definition as written includes that situation. Also included in the scope of this definition would be system activations caused by broken rails or broken track leads since the approach and island circuits are integral parts of the warning "system."

The proposed definition of activation failure ("false proceed" in the NPRM) generated varying suggestions. The BRS encouraged FRA to retain the reference to a 20-second minimum advance activation time. The AAR, however, stated that "[i]t is unreasonable to require reporting in each instance in which a warning system is not activated at least 20 seconds prior to the arrival of a train at the crossing." It is concerned that during certain operating conditions a train may stop short of a crossing, and after a period of time start off again and enter the crossing with flag protection but within less than 20 seconds of crossing system reactivation. This scenario could occur if the warning system includes motion detection or timeout circuitry. We agree with the BRS that the 20-second minimum time should be retained, and at the same time we agree with the AAR that the situation posited is not one that should be considered a false activation. Accordingly, we are revising the definition of false activation to mean "the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, unless the crossing is otherwise protected."

2. Reports of Accidents Involving Grade Crossing Signal Failure

Commenters were generally in favor of the requirement at § 234.7 that all accidents at highway-rail grade crossings involving activation failure be reported to FRA. However, the ASLRA and the Wisconsin Central, Ltd., objected to the requirement for telephone notification. That railroad took the view that if this rule is really only for data gathering, notification within 24 hours should not be necessary. FRA's conception of data gathering is apparently broader than that of the Wisconsin Central. Activation failures are so obviously dangerous and also so rare because of the normal "fail-safe" failure mode, that FRA wants the option to inspect and investigate on site if deemed necessary. This could not be done with any slower notification system.

The AAR objected to the proposed requirement that telephone reports of such accidents include the posted highway speed limit because it would not be readily available to the railroad. We do not think determining this information would unduly burden a reporting railroad. However, because this information is not critical to FRA within the first 24 hours after an accident, and we would not want a report delayed while a railroad seeks the requested information, we have revised the final rule. The final rule thus requires the highway speed limit if known to the railroad.

The ASLRA questioned why the concept of an "impact" is apparently being introduced for the first time in accident reporting. On the contrary, FRA's accident reporting regulations at 49 CFR part 225 have for many years required reporting to FRA of any impact between railroad on-track equipment and a motor vehicle or pedestrian at a highway-rail grade crossing.

3. Grade Crossing Signal System Failure Reports

The proposal to require reporting of activation failures and false activations generated the greatest number and variety of comments from the public.

Commenters generally agreed in principle with the proposal to require reporting of each activation failure. However, SEPTA stated that it "does not believe additional regulation of grade crossings is warranted, and thus views the accumulation of data in pursuit of such regulation as unnecessary." The Wisconsin Central was also opposed to any reporting as "unduly burdensome." One commenter suggested that the 15-day reporting requirement begin to run from the time the railroad is notified of the activation failure, rather than the time period beginning to run from the date of the occurrence itself. These occurrences are so serious, and are so perceived by railroad employees and the general public, that we believe a railroad will be notified in sufficient time to report within the 15-day period.

The BRS was highly critical of FRA's proposal in that, according to the union, "the railroad would have full discretion on making the determination in each case on whether there was a[n activation failure]." The BRS claims that railroads have disregarded "independent" reports of signal malfunctions in the past and thus may do so in the future. The Railroad Commission of Texas was concerned that potential tort liability will exert pressure on railroads and railroad employees to evade reporting requirements. This rule issued today is issued pursuant to the authority of both the Federal Railroad Safety Act of 1970, as amended, and the Accidents Report Act (45 U.S.C. 38 *et seq.*). The Accident Reports Act prohibits use of monthly accident reports in any suit or action for damages. Thus, the written accident reports required in section 234.9(a) cannot be used in tort litigation, which would reduce any potential pressure to evade reporting requirements.

Without taking a position on the BRS' allegations of past railroad practices, we are confident that railroads will comply with the law. In those situations where compliance is lacking, FRA will take vigorous enforcement action, including

where appropriate, taking action against individuals willfully violating the law.

The BRS also proposed that railroads provide follow-up reports with maintenance and accident history of that crossing. The union also proposed that the report contain reports from independent law enforcement agencies and witness statements pertaining to the operation of the crossing. Rather than require such an extensive reporting burden in each instance of activation failure, FRA will, in appropriate situations, obtain needed background information from individual railroads.

Perhaps the most controversial section of the proposed rule was § 234.9(b), which would have required a report for each false activation. State regulatory bodies had varying opinions regarding the proposed requirements. The Arizona Corporation Commission is of the opinion that failure reports are important, but it believes that collection of the reports should be the responsibility of the states in which the crossings are located. The Railroad Commission of Texas felt the rule as published in the NPRM does not go far enough in terms of the information required from the railroads. The Commission argues that source documents should be maintained to allow verification of a railroad's reports.

All commenting railroads and their three industry associations expressed the view that the false activation reporting requirements were excessively burdensome. The Wisconsin Central, for example, complained that its regular monthly inspection program would result in filing a false activation report for each crossing every month because it is the railroad's practice to perform an operating test each time the control case is entered. According to the railroad, a minimum of 731 reports would be filed each month, which according to FRA's estimate of 15 minutes needed to complete each report would cost the railroad a total of over 182 work hours to complete per month. With further centralized review and filing, a total of 231 hours per month would be needed for this large regional railroad to comply with proposed § 234.9(a). The Long Island Railroad similarly complained of the reporting burden, claiming that 1,200 hours per year would be spent complying with the proposed rule. Other railroads similarly complained of the reporting burden, all the while emphasizing that the reports would not shed much light on the issue of false activation.

As a result of these comments, and in light of suggestions made by the Texas Railroad Commission and the AAR, we have revised the definition of false activation (discussed in more detail above) to include only malfunctions of the system. This will significantly reduce the reporting burden placed on the railroads and, combined with a more comprehensive data base of the active crossing warning systems in the nation, we can more accurately assess causes of grade crossing failure and thus assess what further steps need to be taken to prevent them.

4. Sunset Provision

FRA requested comments from the public regarding limiting the reporting requirements to a finite period of time, after which the affected regulation would expire. Railroads and NYSDOT were among those commenters in favor of such a sunset provision, recommending that the requirements be imposed for one, or at most, two years. The BRS, on the other hand, is of the opinion that it is too early to put a time limit on the reporting of system failures. After a review of the comments, FRA has established a two-and-one-half year reporting period for false activation reports. We believe reports filed during this time period will provide FRA with a sufficient statistical base upon which to make informed judgments as to the operational state of grade crossing warning systems. We are declining to establish a sunset provision for reporting of activation failures and accidents involving activation failures. Activation failures are inherently dangerous to both the motoring public and to railroad employees. FRA needs to constantly monitor such failures in order to be able to take appropriate and timely remedial action.

5. Grade Crossing Signal System Information

The Texas Railroad Commission expressed the view that inadequate track circuitry may pose a more serious grade crossing hazard than either failure to activate or false activations. The Commission recommends that FRA require the filing of an inventory of track circuitry of all crossings not equipped with predictors. This would provide data which can contribute to the "policy debate about the best expenditure of funds for grade crossing improvements." FRA has thoroughly considered the comments of the Commission and the AAR's testimony to the effect that crossing systems installed 25 or 30 years ago using insulated joints and DC track circuits might contribute to the public's perception that equipment is not working properly. These older systems, which do not use motion sensors and predictors, cause the crossing warning system to be activated when a train enters the approach circuit. Lacking today's modern sensors and predictors, the system will remain activated even if a train stops in the approach circuit and will remain activated for however long the train is on the approach circuit.

In testimony, a representative of the AAR stated that "we, as railroad people, certainly can furnish the numbers of those crossings that still have that type circuitry very simply without making out all these reports because we have that information available. And any place you've got that type circuitry, the likelihood of a train having to stop within the approach is certainly there, * * * in those cases, the lights are certainly going to continue to flash until he completes movement or backs out of the circuit, one or the other. But that's available today without making those reports."

We agree with those commenters who argued that the proposed rules would not distinguish between true malfunctions and other causes of false activation. We are thus revising the final rule to include provision for a one-time report in which each railroad will provide information as to the type of circuitry and age of major components at each of its active grade crossings. Because the new section is a logical outgrowth of the proposed rule and is made in response to comments submitted in the rulemaking FRA is not initiating formal second notice and comment cycle on this provision.

Section-by-section analysis

234.1 This section states that this regulation prescribes reporting and filing requirements regarding the operation of highway-rail grade crossing warning systems.

234.3 This section states that this regulation applies to all railroads that operate on standard gage track that is part of the general railroad system of transportation. The regulation does not apply to rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation.

234.5(a) Highway-rail grade crossing is a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

234.5(b) False activation is the activation of a highway-rail grade crossing warning system caused by a condition which requires correction or repair of the grade crossing warning system. False activation includes the situation in which the warning system

remains activated after a train has passed through the crossing. A false activation can be caused by a malfunctioning component of the warning system and would include broken track connections or broken rails or similar track signal components designed to activate the warning system. Excluded from this definition are activations of the warning system caused by the presence of non-insulated railroad equipment on the approach circuit of the system. Setting out of a car on an approach circuit or switching of cars on such a circuit would activate the system, but is not considered a false activation because such activation is not caused by a condition which requires correction or repair.

234.5(c) *Activation failure* is defined as the failure of an active railroad-highway crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. If an active railroad-highway crossing system has malfunctioned and is not working properly in that it is not providing at least 20 seconds advance warning of an approaching train, the situation is an activation failure unless the crossing has been provided with an alternative means of warning highway users. Such alternative, temporary warning procedures, such as flagging a crossing, provides a warning to the motoring public. The failure of an automatic warning system to activate in such situations is not considered an activation failure. This provides a railroad with the ability to perform routine maintenance on track and other structures without having to report the situation as an activation failure. A situation in which a mechanical, electrical, or design failure causes a warning system to fail to operate would require the filing of a failure to activate report even if the railroad subsequently provides temporary means of warning highway users.

234.5(d) *Train* is defined as one or more locomotives, with or without cars.

234.7 Every impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing that involves an activation failure must be reported to FRA within 24 hours. Each telephone report must include the following information: Name of the railroad involved; name, title, and telephone number of the individual making the report; time, date, and location of the accident; DOT–AAR Grade Crossing Identification Number of the crossing at which the accident occurred; circumstances of the accident including details of the operating status of the grade crossing warning system; number of persons killed or injured; maximum authorized train speed; and, if known, posted highway speed limit at the crossing location. This telephone report is not a substitute for other required written reports as appropriate. Every telephone report made pursuant to this section must be followed by a written report filed in accordance with § 234.9(a) of this part (reports of activation failure). A monthly report in accordance with 49 CFR 225.11 and 225.19 must be filed in accordance with those regulations which require that every highway-rail grade crossing accident/incident be reported to FRA on Form FRA F 6180.57, regardless of the extent of damages. In addition, a highway-rail grade crossing accident/incident that results in damages exceeding the damage reporting threshold (presently $6,300) must be reported to FRA on Form FRA F6180.54.

234.9(a) A railroad must report to FRA each activation failure within 15 days of its occurrence. FRA Form 6180.81 "Highway-rail Grade Crossing Warning Device Failure Report" is used for this purpose and completed in accordance with the instructions printed on the form. This form must be filed for any failure to activate—whether or not an accident has occurred at the crossing.

234.9(b) A railroad must report to FRA each false activation of a highway-rail grade crossing warning system within 30 days after expiration of the month during which the false activation occurred. FRA Form 6180.81, "Highway-rail Grade Crossing Warning Device Failure Report" is used for this purpose and is completed in accordance with the instructions printed on the form. The reporting schedule of this requirement tracks the present accident reporting scheme with which all railroads are familiar. The requirements of paragraph (b) will expire thirty months after the Office of Management and Budget approves FRA Form 6180.81.

234.11 Within six months of the effective date of this regulation, each railroad must file with the FRA one copy of its current highway-rail grade crossing maintenance, inspection, and testing rules and procedures. Every railroad commencing operations more than six months after the effective date of this regulation must file with FRA one copy of its current highway-rail grade crossing maintenance, inspection, and testing rules and procedures before commencing operations. If a railroad has no written maintenance, inspection, and testing rules and procedures, a statement to that effect must be filed with FRA. Filing with FRA is accomplished by filing the appropriate document with the FRA Regional Office for the region in which the railroad headquarters is located. Each amendment to a railroad's highway-rail grade crossing maintenance, inspection, and testing rules and procedures must be filed with FRA within 30 days after issuance.

234.13 Within six months of the effective date of this regulation, each railroad must file with the FRA information required by FRA Form F 6180.83, "Grade Crossing Signal System Information."

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979). The rule will not have any significant direct or indirect economic impact for the following reasons. First, its requirements apply only in the case of highway-rail grade crossing accidents involving malfunctioning warning devices or in other clearly limited situations involving malfunctioning warning devices. Second, compliance with the notification requirements should not be difficult because in some cases it is accomplished by a toll free phone call (in accident situations) and in other cases (non-accident situations), by completing a short standard form supplied by the agency. Compliance with the remainder of the rule requires providing to FRA on a one-time basis (1) a copy of a railroad's maintenance, inspection, and testing procedures and (2) a profile of a railroad's active grade crossing warning systems.

The purpose of the rule is to collect information on the extent of grade crossing warning device malfunctions. Because this information is not currently available to us, it is difficult to estimate the frequency of the events that will trigger the new reporting requirements. At this time, we expect very few events to require telephone notification or the filing of new forms. If this proves to be true, the cost to the industry for these new requirements will be insignificant. To the extent that this assumption proves to be false, the benefit of the

knowledge that a significant problem exists would be substantial in that this knowledge would form the basis for corrective action. Without the proposed data collection effort, we are unable to justify regulatory action.

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Paperwork Reduction Act

This rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
234.7	Telephone notification of accident involving grade crossing signal failure.	15 minutes each.
234.9	Grade crossing signal failure report.	15 minutes each.
234.11	Filing railroad rules or statement of no rules.	One hour each railroad.
234.11	Filing amendments to railroad's rules.	20 minutes each filing.
234.13	Filing grade crossing warning system information.	20 minutes each filing.

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

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

List of Subjects in 49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

Final Rule

In consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations by adding new Part 234 as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY

Sec.
234.1 Scope.
234.3 Application.
234.5 Definitions.
234.7 Accidents involving grade crossing signal failure.
234.9 Grade crossing signal failure reports.
234.11 Railroad rules.
234.13 Grade crossing signal system information.
234.15 Civil penalty.
234.17 Criminal penalty.
Appendix A to Part 234—Schedule of Civil Penalties

Authority: (45 U.S.C. 431, 437, and 438; 45 U.S.C. 38 and 42; and 49 CFR 1.49(f), (g), and (m).

§ 234.1 Scope.

This part prescribes reporting requirements with respect to the operation of highway-rail grade crossing warning systems.

§ 234.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to railroads that operate on standard gage track that is part of the general railroad system of transportation.

(b) This part does not apply to rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation.

§ 234.5 Definitions.

As used in this part:

(a) *Highway-rail grade crossing* means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

(b) *False activation* means the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)

(c) *Activation failure* means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.)

(d) *Train* means one or more locomotives, with or without cars.

§ 234.7 Accidents involving grade crossing signal failure.

(a) Each railroad shall report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving activation failure. Notification shall be provided to the National Response Center within 24 hours of occurrence at (800) 424–0201. Complete reports shall thereafter be filed with FRA pursuant to § 234.9(a) of this part (false activation report) and 49 CFR 225.11 (accident/incident report).

(b) Each telephone report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of accident;

(4) U.S. DOT–AAR Grade Crossing Identification Number;

(5) Circumstances of the accident, including operating details of the grade crossing warning device;

(6) Number of persons killed or injured, if any;

(7) Maximum authorized train speed; and

(8) Posted highway speed limit, if known.

§ 234.9 Grade crossing signal system failure reports.

(a) Each railroad shall report to FRA within 15 days each activation failure of a highway-rail grade crossing warning system. FRA Form No. 6180–83, "Highway-Rail Grade Crossing Warning System Failure Report," shall be used for this purpose and completed in accordance with instructions printed on the form.

(b) Each railroad shall complete FRA Form No. 6180–83, "Highway-Rail Grade Crossing Warning System Report," for each false activation of a highway-rail grade crossing warning system. Each report required by this paragraph (b) shall be submitted to FRA within 30 days after expiration of the month during which the false activation occurred. The requirements of this paragraph (b) shall expire April 1, 1994.

§ 234.11 Railroad rules.

(a) Before April 1, 1992, each railroad shall file with the Associate Administrator for Safety, FRA, one copy of its current highway-rail grade crossing maintenance, inspection, and testing rules and procedures. Each railroad commencing operations after the above date shall comply with this paragraph before commencing operations.

(b) If a railroad has no written maintenance, inspection, and testing procedures, a statement to that effect shall be filed with FRA.

(c) Each amendment to a railroad's highway-rail grade crossing maintenance, inspection, and testing rules and procedures shall be filed with FRA.

§ 234.13 Grade crossing signal system information.

Before April 1, 1992 each railroad shall file with the FRA information regarding circuit type and component age for each of its active highway-rail grade crossing signal systems on its railroad. FRA Form No. 6180–87 "Highway-rail Grade Crossing Signal System Information" shall be used for this purpose and completed in accordance with instructions printed on the form.

§ 234.15 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of up to $10,000 except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a schedule of civil penalties.

§ 234.17 Criminal penalty.

Whoever knowingly and willfully makes, causes to be made, or participates in making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

Appendix A to Part 234—Schedule of Civil Penalties

Section	Violation	Willful violation
234.7 Accidents involving grade crossing signal failure	$5,000	$7,500
234.9 Grade crossing signal system failure reports	2,500	5,000
234.11 Railroad rules	2,500	5,000
234.13 Grade crossing signal system information	2,500	5,000

NOTE: A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Issued in Washington, DC, on July 16, 1991.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 91–17294 Filed 7–22–91; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV-91-412PR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 931 for the 1991–92 fiscal period (July 1–June 30). The proposal is needed for the Northwest Fresh Bartlett Pear Marketing Committee (committee) established under M.O. 931 to incur operating expenses during the 1991–92 fiscal period and to collect funds during that period to pay those expenses. This would facilitate program operations.

DATES: Comments must be received by August 2, 1991.

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

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 931 (7 CFR part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The Bartlett pear marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such 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 60 handlers of fresh Bartlett pears regulated under this marketing order each season and approximately 1,900 Bartlett pear producers in Washington and Oregon. 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 these handlers and producers may be classified as small entities.

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

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

The committee met May 30, 1991, and unanimously recommended 1991–92 fiscal period expenditures of $91,062 and an assessment rate of $0.03 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1990–91 fiscal period budgeted expenditures were $78,485 and the assessment rate was $0.015.

These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts with the exception of increases in salaries, office rent, reserve for contingencies, and education and compliance. The increase for education and compliance from $500 to $5,000 is for routine handler audits necessary to determine handler compliance with program requirements.

Assessment income for the 1991–92 fiscal period is expected to total $64,783 based on shipments of 2,159,433 packed boxes of pears at $0.03 per standard box or equivalent. Other available funds include a reserve of $23,779 carried into this fiscal period, $1,000 of prior year assessments, and $1,500 in miscellaneous income, primarily from interest bearing accounts. Total funds available equal $91,062 the same as the recommended budget.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1990–91 fiscal period be placed in its reserve. The reserve is within the limits authorized under the marketing order.

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

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

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approvals need to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 931 be amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

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

2. New § 931.226 is added to read as follows:

§ 931.226 Expenses and assessment rate.

Expenses of $91,062 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.03 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1992. Unexpended funds from the 1990–91 fiscal period may be carried over as a reserve.

Dated: July 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17456 Filed 7–22–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 993

[FV–91–411PR]

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 993 for the 1991–92 crop year established under the marketing order for dried prunes produced in California. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the marketing order committee to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

DATES: Comments must be received by August 2, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and 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, Marketing Order Administration Branch, F&V, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 475–5992.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 993 (7 CFR part 993), regulating the handling of dried prunes produced in California. This 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 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 proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that the 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. This, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of prunes produced in California subject to regulation under the California prune marketing order, and approximately 1,200 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) 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 prunes handlers and producers may be classified as small entities.

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

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

The Committee met on June 25, 1991, and unanimously recommended 1991–92 marketing order expenditures of $290,224 and an assessment rate of $1.76 per ton of salable prunes. In comparison, 1990–91 budget expenditures were $260,736 and the assessment rate was $1.68 per ton. Assessment income for 1991–92 is estimated at $290,224 based on a crop of 164,900 salable tons. Major expenditures categories include $145,750 for salaries and wages, $122,600 for administrative expenses, and $21,874 for contingencies. The increase in administrative expenses is due to an addition to the research and development line item of $30,000 in the event a delegation needs to be sent to France during July 1992 for market development and research. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned of credited to handlers.

While this proposed action would impose some additional costs on

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

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate. Although the Board may use funds from the previous year for up to five months in the new year, Departmental approval of the expenditure categories is necessary in order for the Board to use those funds. Therefore, this action needs to be expedited.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 993 be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

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

2. Section 993.342 is added to read as follows:

§ 993.342 Expenses and assessment rate.

Expenses of $290,224 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.76 per ton for salable dried prunes for the 1991–92 crop year ending July 31, 1992.

Dated: July 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17458 Filed 7–22–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-24]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain PWC PW100 series turboprop engines, which would require installation of a new or reworked fuel pump. This proposal is prompted by the determination that large torque fluctuations or torque reductions have occurred during flight due to main fuel pump input driveshaft vibration. This condition, if not corrected, could result in large engine torque variations and a subsequent aircraft asymmetric thrust condition.

DATES: Comments must be received no later than September 6, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91–ANE–24, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7085.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–24". The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been several events where large torque fluctuations or torque reductions have occurred during flight. The FAA has determined that the fuel pump input drive shaft experiences torsional vibration which can induce oscillations of the main fuel control governor, which can result in the noted torque fluctuations or torque reductions This condition, if not corrected, could result in large engine torque variations and a subsequent aircraft asymmetric thrust condition.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require installation of a new or reworked fuel pump incorporating an input drive shaft with increased torsional stiffness.

It is estimated that approximately 200 engines would be affected by this AD, that it would take approximately 5 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of required parts is estimated to be $11,500.00 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $2,355,000.00.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt Whitney Canada: (Docket No. 91–ANE–24)

Applicability: Pratt & Whitney Canada (PWC) PW123, PW124B, PW125B and PW126A turboprop engines installed on, but not limited to, DeHavilland of Canada DHC–8 Series 300, Canadair CL–215T, Aerospatiale ATR–42 amd ATR–72, Fokker 50, and British Aerospace ATP aircraft.

Compliance is required at the next shop visit, or within 12 months from the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent large engine torque variations and a subsequent aircraft asymmetric thrust condition, accomplish the following:

(a) Install a new or reworked fuel pump in accordance with the Accomplishment Instructions of PWG Service Bulletin 20946, Revision 1, dated February 18, 1991, on those engine serial numbers identified in the Effectivity paragraph of the noted service bulletin.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on July 3, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR. Doc. 91–17423 Filed 7–22–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 113, and 114

RIN–1515–AA22

Proposed Customs Regulations Amendments Relating to Duty-Free Stores

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: The Customs Service is correcting a number of typographical errors and omissions, and extending the period of time within which comments may be submitted, with respect to the notice of proposed rulemaking on duty-free stores, which appeared in the **Federal Register** on May 17, 1991 (56 FR 22833). That document proposed to amend the Customs Regulations to designate duty-free stores as a class of Customs bonded warehouse, establish procedures for their administration, and incorporate these procedures in the Regulations, such changes being necessary to implement section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

DATES: Comments must be received on or before August 15, 1991.

ADDRESSES: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch (202–566–8237).

SUPPLEMENTARY INFORMATION:

Background

Duty-free stores are essentially Customs bonded warehouses wherein merchandise is offered for sale to departing travelers without payment of Customs duties and taxes, on condition that the merchandise will be exported by and with them from the United States. At present, there are approximately 125 such stores operating throughout the U.S., 43 of which are on the Canadian border, 33 at the Mexican border, and 49 at U.S. international airports. Duty-free stores were first established by Customs in the late 1950's and have been administered since their inception under Customs directives, rather than under any specific law or regulation.

A document published in the **Federal Register** on May 17, 1991 (56 FR 22833) proposed to amend the Customs Regulations to include duty-free stores as a new class of Customs bonded warehouse together with specific procedures for their administration. These changes were necessary to implement section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

Comments on this proposed rulemaking were to have been received on or before July 16, 1991. Customs has, however, received a request from a trade association to extend this period, the association basically stating that it needs additional time to coordinate a meaningful comment with its membership. Customs believes, under the circumstances, that the request has merit. Accordingly, the period of time for the submission of comments is being extended as indicated.

In addition, the proposed rulemaking contained a number of typographical errors and omissions which are corrected as set forth below.

Corrections

1. On page 22834, column 1, line 21, under item "2", "not" is corrected to read "now".

2. In § 19.36(e), on page 22838, column 1, line 51, "form" is corrected to read "from".

3. In the second sentence of § 19.37(a), on page 22838, second column, line 18, "§ 19.39(b)" is corrected to read "§ 19.39 (a) and (b)".

4. In § 19.39(c)(4)(i), on page 22839, column 2, line 30, "not" is corrected to read "no".

5. The third sentence of the conclusory text of § 144.37(h)(2) following paragraph (vi), on page 22840, second column, line 15, which reads, "A permit file copy will be attached to the parcel containing the purchaser." is correct to read as follows:

"A permit file copy will be attached to the parcel containing the articles, and the original given to the purchaser."

6. The phrase "last date" appearing in the third sentence of the conclusory text of § 144.37(h)(3) following paragraph (vi), on page 22840, second column, line 49, is corrected by removing the word "last".

Dated: July 16, 1991.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 91-17407 Filed 7-22-91; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 118

Proposed Customs Regulations Amendments Concerning Centralized Examination Stations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to add a new part to the Customs Regulations to set forth the regulatory framework for the establishment, operation and termination of Centralized Examination Stations (CES's). CES's are privately operated facilities at which imported merchandise is made available to Customs inspectors for physical examination. In recent years, the proliferation of examination sites scattered throughout a port has resulted in inspectors incurring a high level of non-productive travel time. The CES program allows Customs to better use its inspectional resources and clear higher volumes of cargo.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments (preferably in triplicate) should be addressed to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Leo Morris or Patricia Duffy, Office of Inspection and Control, 202-566-8151.

SUPPLEMENTARY INFORMATION:

Background

In recent years there has been a rapid increase in the number of Container Freight Stations (CFS), bonded warehouses, truck and rail terminals, and other indirect carriers receiving freight. The examination of this cargo has presented many logistical and staffing problems for Customs. Often these examinations sites are widely scattered throughout a port. This causes inspectors to incur a high level of non-productive travel time in order to perform regulatory compliance, classification, and valuation examinations such as securing samples, or verifying country of origin markings.

Among the many actions Customs has taken to cope with its increased work load is the development of the Centralized Examination Station program. Centralized Examination Stations (CES's) are privately operated facilities at which imported merchandise is made available to Customs inspectors for physical examination. By having as few work sites as possible Customs is able to perform more intensive examinations with better use of inspectional resources in a better work environment. Among other benefits of CES's are improved inspectional supervision, more thorough and effective examinations and guaranteed service. The CES program allows Customs to clear higher volumes of cargo with fewer resources.

There are approximately 140 CES's operating nationwide. These facilities are operated by a variety of entities including container freight station operators, transportation companies and terminal operators. Customs considers the program successful and plans to continue it. Feedback from segments of the importing community such as brokers, importers, trucking firms, shipping lines and airlines indicates overall acceptance of CES's. Many of these entities have communicated to Customs their opinions that CES's improve the examination process, provide fair service at a reasonable cost, are responsive to importer's needs and have adequate facilities that are conveniently located. Customs is interested in further comments on the degree to which CES's respond to the needs of the importing public and any specific comments for improvement.

Existing CES's have been operating under guidelines promulgated in Customs Directives, the most recent being Customs Directive 3270-05, issued August 31, 1990. In order to fully comply with the Administrative Procedure Act, Customs proposes to amend the Customs Regulations to incorporate the CES program. Existing CES's may continue business during consideration of the proposals. Upon adoption of final rules, district directors will permit CES's operating under agreements that contain a clause setting forth the duration of the operation to continue operating for the remainder of that time, subject to continued adherence to all other terms of the agreement as well. Operators that opened a CES with a commitment from Customs that they would be allowed to continue business for a specified period of time deserve to have that commitment honored. At the expiration of the agreement, the district director will use the procedures set forth in the regulations to select future CES operators.

CES's currently operating under an agreement without a time period specified will be permitted to operate after adoption of final rules only until the district director selects an operator under the regulations. Operators that commenced business without a specified time period will be eligible to submit applications under the regulations as finally adopted.

Discussion of Proposals

The regulations concerning the establishment, operation, and possible termination of CES's are being placed in new part 118.

Subpart A contains general provisions concerning CES's. Beginning with the definition of a CES, it further states that a CES may be established only when a district director determines the need for a port or area under his jurisdiction to have such a facility. His determination is announced by written bulletin posted at the customhouse. That announcement begins a 60-day period during which applications to operate a CES will be accepted. Applications must be in writing and must be submitted to the district director that made the announcement.

The subpart continues with the responsibilities a CES operator must assume, beginning with signing a written agreement with Customs in order to commence operations. The agreement will establish the length of time the CES will be allowed to operate. It is proposed that this period be from three to five years. Customs believes this period is long enough to make operators willing to invest the necessary money and resources to open a CES, but not so long as to remove the need to stay responsive to the market place in contemplation of the next selection process. However, comments on different time periods will be considered. The agreement also sets

forth the conditions under which the operator agrees to carry on business. In some particulars, the conditions in the agreement will be repetitions of the responsibilities of an operator set forth in the regulations. Also, due to the fact that the final selection and execution of an agreement is contingent upon the fitness of the facility to be operated as the CES, the applicant's experience in handling international cargo, as well as a background investigation of the applicant, the agreements are not transferrable. If an operator chooses to terminate operation of a CES before expiration of his agreement, Customs will, assuming the location still requires a CES, choose a new operator pursuant to the regulations.

Subpart B concerns the application process. One regulation spells out a list of particulars that must be described in the application, such as the name of the principals or corporate officers that will be responsible for operation of the CES and the security features of the site that will be CES. The district director is responsible for reviewing the applications and selecting the one or more applicant that will be allowed to operate a CES.

Subpart C concerns the movement of merchandise to a CES. Customs primary concern is that the party liable for each part of a transpiration be readily identifiable. Transportation of merchandise to a CES does not involve any new type of movement; the traditional methods of an importer moving his own goods or employing some variety of bonded mover are present in the CES situation. The subpart identifies the forms unable to request permission to move merchandise to a CES. Various scenarios of movement of merchandise are listed with the assignment of liability described as well. The subpart also includes the district director's authority to direct that a certain type of movement be used to transport merchandise to a certain CES if he has reason to so direct, *e.g.*, the need to deliver the merchandise to a Contraband Enforcement Team (CET) for intensive examination.

Subpart D concerns the revocation of an operator's selection and cancellation of the agreement to operate a CES. Causes to take such an action are separated into those causing immediate revocation and cancellation and those resulting in proposed revocation and cancellation. The district director having jurisdiction and cancellation. The district director having jurisdiction over the operator begins the process by written notice to the operator. The operator may appeal the district directors action by written notice to the Regional Commissioner having jurisdiction over the district involved, and if necessary, the Regional Commission's decision may be appealed to the Commissioner.

Comments

Before adopting these proposals, consideration will be given to any written comments timely submitted to Customs. Along with general comments concerning CES's, Customs invites comments concerning the costs and benefits of CES's. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirments of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John E. Doyle, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Management Reduction Act of 1980 (44 U.S.C. 3540 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1515–), Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in these proposed regulations is in § 118.11 (19 CFR 118.11). The information is necessary to enable a district director to choose the best qualified applicant or applicants to operate a CES.

Estimated total annual reporting and/or recordkeeping burden: 600 hours.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 300.

Estimated annual frequency of responses: 1.

List of Subjects in 19 CFR Part 118

Customs duties and inspection, Imports, Exports, Centralized Examination Stations.

Proposed Amendments

It is proposed to amend Chapter I of title 19, Code of Federal Regulations (19 CFR Ch. I), by adding a part 118 to read as follows:

PART 118—CENTRALIZED EXAMINATION STATIONS

Sec.
118.0 Scope.

Subpart General Provisions

118.1 Definition.
118.2 Establishment of Centralized Examination Stations.
118.3 Written agreement.
118.4 Responsibilities of a Centralized Examination Station operator.

Subpart B—Application to Establish a Centralized Examination Station

118.11 Contents of application.
118.12 Review of application.
118.13 Notification of selection or nonselection.

Subpart C—Movement of Cargo to a Centralized Examination Station

118.21 Permission to transfer cargo to CES for examination.
118.22 Assumption of liability during transfer.
118.23 Annual blanket transfer.
118.24 Designation of bonded movement and CES to be used.

Subpart D—Termination of Centralized Examination Station

118.31 Revocation of selection and cancellation of agreement to operate a Centralized Examination Station.
118.32 Notice of revocation and cancellation.
118.33 Appeal procedure.
118.34 Appeal for the Regional Commissioner's decision.

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

§ 118.0 Scope.

This part sets forth regulations providing for the making of agreements

between Customs and persons desiring to operate a Centralized Examination Station. It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the CES operator's agreement, the procedures for moving merchandise to a CES for examination, the grounds and procedures for revoking an selection and cancelling an agreement or proposing to revoke and cancel, and the appeal rights following either immediate or proposed revocation and cancellation.

Subpart A—General Provisions

§ 118.1 Definition.

A Centralized Examination Station (CES) is a privately operated facility at which imported merchandise is made available to Customs inspectors for physical examination. A CES may be established in any port or any portion of a port, or any other area under the jurisdiction of a district director.

§ 118.2 Establishment of Centralized Examination Stations.

When a district director determines the need for a port to establish a CES, or an additional CES, and when the term of an existing CES is about to expire, he will announce by written bulletin posted at the customhouse that applications to operate a CES are being accepted. This bulletin will include the general criteria (see § 118.11), and any local criteria that applicants must meet. Applications will be accepted for 60 days from the date of such announcement. Applications will only be accepted in response to a district director announcement.

§ 118.3 Written agreement.

The applicant tentatively selected to operate a CES must sign a written agreement with Customs before commencing operations. Failure to execute a written agreement with Customs in a timely manner will result in the revocation of that applicant's tentative selection and the tentative selection of another applicant. In addition to the provisions described elsewhere in this part, the agreement will specify the duration of the authority to operate the CES. That duration will be not less than three years nor more than five years. Such agreements cannot be transferred, sold, inherited, or conveyed in any manner. At the expiration of the agreement, an operator wishing to reapply may do so pursuant to this Part and his application will be considered de novo.

§ 118.4 Responsibilities of Centralized Examination Station Operator.

By signing the agreement to operate a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in his approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs. Such service must be provided on a "first come—first served" basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application and bill users directly for services rendered. The CES operator must provide 90 days notice to Customs of any proposed fee changes. In the case of a fee increase, the operator must include written justification for the increase. The district director may consider whether to allow a CES operator to use a new fee schedule. Unless so approved, the CES operator is bound by the fee schedule in his approved application;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the district director pursuant to § 118.11(f). Additions to or deletions from the list must be submitted in writing to the district director within 10 calendar days of the commencement or termination of employment;

(g) Maintain a Customs custodial bond in an amount set by the district director and further agrees to its application as a performance bond to the CES operation. The operator also agrees to increase the amount of the bond if deemed appropriate by the district director;

(h) Maintain all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examination conducted pursuant to the agreement to operate the CES. Further, such records will be made available for inspection upon demand by Customs;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation.

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of $1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the district director.

Subpart B—Application to Establish Centralized Examination Station

§ 118.11 Contents of application.

The application to operate a CES must consist of the following and any application not providing the following information will not be considered. The responses to paragraphs (b), (c), (d), (g), (h), and (i) of this section are the criteria used to judge the applications:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service;

(d) A detailed list of equipment showing the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed CF 301 must be included with the application which will be approved upon selection;

(f) A list of all employees involved in the CES operation giving their names, dates of birth, and social security numbers (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations, and knowledge of Customs procedures and regulations, or a commitment to acquire that knowledge;

(h) Any information that relates to other commercial business activities, or relationships, or other Customs activities or relationships that are an actual or potential conflict of interest; and

(i) Any other information that the district director considers essential to the selection process based on port conditions.

§ 118.12 Review of application.

The district director, after review of all applications, shall select the one or more applicants that will be granted authority to operate a CES. The district director will select the one or more applicants that will best meet the examination needs of the Customs Service and facilitate the movement of imported merchandise. The district director may use a CES committee made up of the importing community during the review of applications.

§ 118.13 Notification of selection or nonselection.

The applicant tentatively selected to operate a CES will be notified in writing by the district director of this tentative selection. All selections are tentative pending execution of a written agreement between Customs and the applicant. Upon execution of such written agreement, tentative selection becomes final. Applicants not selected to be CES operators will receive written notice of such fact. Such notice will state the reason or reasons for nonselection.

Subpart C—Movement of Cargo to a Centralized Examination Station

§ 118.21 Permission to transfer cargo to CES for examination.

When a shipment requires examination at a CES, Customs Form (CF) 3461, or CF 3461 (ALT) for land border cargo, or an attachment to either, may be used to request permission for such a transfer. The entry filer must write, type or stamp the following lines on the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: _____ All or,
Container #'s _____, _____, _____
To CES _____
Approved by: U.S. Customs Inspector
_____
Date _____

Unless the district director exercises his authority pursuant to § 118.24 of this part, the reviewing inspector will initial and date the form or attachment being used, or stamp one copy of the CF 3461 if required by the district director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES.

§ 118.22 Assumption of liability during transfer.

Customs will allow merchandise designated for examination to be transferred from the importing carrier's point of unlading or from a bonded facility, to a CES, if such transfer takes place under one of the following bonded movements:

(a) If merchandise is transferred directly to a CES from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the CES operator.

(c) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the operator shall be liable under the terms of its own custodial bond.

(d) If the importer or his agent arrange for transfer of merchandise to a CES, the importer shall assume liability under the entry bond.

§ 118.23 Annual blanket transfer.

District directors may institute an annual blanket transfer application to facilitate any of the bonded movements described in § 118.22 of this chapter.

§ 118.24 Designation of bonded movement and CES to be used.

In the event the district director deems it necessary, he may direct the type of bonded movement used to transfer merchandise to a CES, as well as designate the CES at which examination must take place.

Subpart D—Termination of Centralized Examination Station

§ 118.31 Revocation of selection and cancellation of agreement to operate a Centralized Examination Station.

(a) *Immediate revocation and cancellation.* The district director may immediately revoke the selection as operator and cancel that person or entity's operator's agreement to operate a CES if:

(1) The selection and agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which has signed an agreement to operate a CES is convicted of, or has committed acts which would constitute, a felony or a misdemeanor involving theft, smuggling, or a theft-connected crime, and the conviction resulted from, or the subject acts were in fact committed, as part of their official duties as operator or corporate officer. Any change in the employment status of a corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for a felony or misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from an act or acts committed in their official capacity as corporate officer will not preclude application of this provision.

(b) *Proposed revocation and cancellation.* The district director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by § 118.4; or

(5) The bond required by § 118.4 is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

§ 118.32 Notice of revocation and cancellation.

The district director shall immediately revoke the selection as operator and cancel the agreement to operate a CES, or propose to revoke such selection and cancel such agreement, by serving notice in writing on the operator. The notice shall be in the form of a statement specifically setting forth the grounds for revocation and cancellation or proposed revocation and cancellation and shall inform the operator of his right to appeal.

§ 118.33 Appeal procedure.

An operator wishing to appeal a revocation and cancellation or show cause why a proposed revocation and cancellation should not occur may, within 10 calendar days of receipt of the notice or proposal, file with the Regional Commissioner having jurisdiction over the district director that signed the notice or proposal a written appeal. A revocation and cancellation pursuant to § 118.31(a) of this part shall remain in effect during any appeal. The appeal shall be filed in duplicate and shall set forth the response of the CES operator

to the statements of the district director. The Regional Commissioner shall render a decision to the operator, in writing, stating the reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless the period is extended with due notification to the operator.

§ 118.34 Appeal from the Regional Commissioner's decision.

Upon a decision by the Regional Commissioner affirming the revocation of selection and cancellation of an agreement to operate a CES, or agreeing that a proposed revocation and cancellation should occur, the operator may file with the Commissioner of Customs, in writing, a request for such additional review as the Commissioner, or his delegate, deems appropriate. This request must be received by the Commissioner within 10 calendar days of the operator's receipt of the Regional Commissioner's decision. The Commissioner, or his delegate, shall render a decision to the operator, in writing, stating the reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the operator.

Michael H. Lane,

Acting Commissioner of Customs,

Approved: July 18, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-17445 Filed 7-22-91; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3972-5]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed stay (IL 12-6-5134).

SUMMARY: In the Rules section of today's **Federal Register**, USEPA is announcing a 3-month stay and reconsideration of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compound (VOC) emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814 June 29, 1990). That action stays , the effectiveness of the following rules, including the applicable compliance dates, for three months: (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868-9, codified at 40 CFR 52.741 (e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872 codified at 40 CFR 52.741 (e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741 (w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741 (w)(4)). USEPA is issuing that stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B), which provides the Administrator authority to stay the effectiveness of a rule for up to 3 months during reconsideration.

This rule proposes, pursuant to CAA sections 110(c), 301(a)(1), and 307(d)(1)(B) 42 U.S.C. 7410(c), 7601(a)(1), and 7607 (d)(1)(B), to temporarily stay the effectiveness of these rules, and applicable compliance dates, beyond the 3 months expressly provided in section 307(d)(7)(B), but only if and as long as necessary to complete reconsideration (including any appropriate regulatory action) of the rules in question. Pursuant to the rulemaking procedures set forth in CAA section 307(d), 42 U.S.C. 7607(d), USEPA hereby requests public comment on this proposed temporary extension of the three-month stay.

DATES: Comments on this proposal must be received by August 22, 1991 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by August 22, 1991 at the address below. Interested persons may call Mr. Bortzer at (312) 886-1430 to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Docket: Pursuant to section 307(d)(1), of the CAA, 42 U.S.C. 7607 (d)(1), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5-AR-91-1, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

U.S. Environmental Protection Agency, Docket No. 5A-91-2, Air Docket (LE-131), Room M1500, Waterside Mall, 401 M Street SW., Washington, DC 20460, (202) 245-3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886-6036 and at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, USEPA announces that, pursuant to CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of certain Federal rules requiring RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). Readers should refer to that notice for a complete discussion of the background and rules affected.[1] In that notice, USEPA also announces a 3-month stay of those rules during reconsideration. However, USEPA may not be able to complete reconsideration (including any appropriate regulatory action) of the rules within the 3-month period expressly provided by CAA section 307(d)(7)(B). If USEPA does not complete the reconsideration in this timeframe then it will extend temporarily the stay of the emission limitations and applicable compliance dates until USEPA completes final rulemaking action upon reconsideration. By this action, USEPA proposes a temporary extension of the stay beyond the 3 months provided, only if and as long as necessary to complete reconsideration of the rules in question. If USEPA takes final action to impose this stay, the stay would extend until the effective date of USEPA's final action following reconsideration of these rules.

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[1] In that discussion and as incorporated by reference here, USEPA makes expressly clear that, by its actions today, including this proposal, USEPA in no manner concedes that it violated any provision of the CAA or Administrative Procedure Act.

By this notice USEPA hereby proposes, pursuant to CAA sections 110(c), 301(a)(1), and (307(d)(1)(B), 42 U.S.C. 7410(c), 7601(a), and 7607(d)(1)(B), a temporary administrative stay of the effectiveness of the following rules, including the applicable compliance dates, promulgated as final Federal rules requiring RACT to control VOCs in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814 June 29, 1990): (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741 (e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741 (w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified 40 CFR 52.741 (w)(4)). In turn, pursuant to the rulemaking procedures set forth in section 307(d) of the CAA, USEPA hereby requests comment on such a proposed extension.

USEPA is proposing this temporary administrative stay of the rules and associated compliance dates in order to complete reconsideration of these rules, as discussed above. USEPA intends to complete its reconsideration of the rules and, following the notice and comment procedures of section 307(d) of the CAA, take appropriate action. If the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of 1 year from the date of final action on reconsideration. Note that a 1-year compliance period was the general compliance period provided in the Federal RACT rules promulgated on June 29, 1990 (55 FR at 26814). As a general matter, USEPA will provide an adequate period for compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. Note that, like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA section 307(d).

USEPA recognizes the interest of the State of Wisconsin in this matter.[2] The regulatory requirements that are affected by today's proposal were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider rules in question as expeditiously as practicable.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: July 1, 1991.

Identification of Document: Proposed Rule indefinitely extending a stay of portions of the Chicago Federal Ozone Plan as applied to Duo-Fast Corporation and Stepan Company.

William K. Reilly,

Administrator.

[FR Doc. 91–16493 Filed 7–22–91; 8:45 am]

BILLING CODE 6560-50-M

[2] USEPA representatives have conferred with representatives of the Wisconsin Attorney General's office regarding the possible need for USEPA to undertake reconsideration of the regulatory requirements affected by today's proposed action.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-218, RM-7752]

Radio Broadcasting Services; Charleston, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dianne Anderson requesting the substitution of Channel 291C2 for Channel 291A at Charleston, Missouri, and modification of the construction permit for Station KWKZ. The coordinates for Channel 291C2 at Charleston are 36–56–30 and 89–33–00. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Charleston or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before September 9, 1991, and reply comments on or before September 24, 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: Anne Thomas Paxson, Borsari & Paxson, 2033 M Street, NW., suite 630, Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–218, adopted July 5, 1991, and released July 17, 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.

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* contact.

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. 91–17400 Filed 7–22–91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-216, RM-7742]

Radio Broadcasting Services; Camas, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KMAS Broadcasting Corporation seeking the

substitution of Channel 234C3 for Channel 234A at Camas, Washington, and the modification of its construction permit for Station KMUZ(FM) accordingly. Channel 234C3 can be allotted to Camas in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site with a site restriction of 19.1 kilometers (11.9 miles) east of the community. The coordinates for Channel 234C3 at Camas are North Latitude 45–31–39 and West Longitude 122–10–17. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 234C3 at Camas or require the petitioner to demonstrate the availability of an additional equivalent class channel. Since Camas is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

DATES: Comments must be filed on or before September 9, 1991, and reply comments on or before September 24, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard L. Schwary, President, KMAS Broadcasting Corporation, P.O. Box 1155, Camas, Washington 98607 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–216, adopted July 5, 1991, and released July 17, 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.

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. 91–17401 Filed 7–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–217, RM–7751]

Radio Broadcasting Services; Brainerd, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Greater Minnesota Broadcasting Corporation proposing the allotment of FM Channel 278A to Brainerd, Minnesota, as that community's third FM broadcast service. The coordinates for Channel 278A at Brainerd are 46–21–36 and 94–12–06. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before September 9, 1991, and reply comments on or before September 24, 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: June A. Persons, Greater Minnesota Broadcasting Corporation, KVBR Building; Brainerd, Minnesota 56401 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–217, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket 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.

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* contact.

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. 91–17398 Filed 7–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–163; RM–7170]

Radio Broadcasting Services; Bay St. Louis and Poplarville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for supplemental information.

SUMMARY: The Commission requests supplemental information from Dowdy and Dowdy Partnership ("petitioner"), licensee of Station WZKX(FM), Channel 300C, Poplarville, Mississippi, on its proposal to reallot Channel 300C from Poplarville to Bay St. Louis, Mississippi, and modify the license of Station WZKX(FM) accordingly. See 55 FR 12391. Petitioner is requested to provide information to show that Bay St. Louis is deserving of a first local service or whether it should be credited with all of the aural services licensed to the Biloxi-

Gulfport, Mississippi, Urbanized Area. No additional counterproposals may be submitted since an opportunity for the filing of counterproposals has already been provided.

DATES: Comments must be filed on or before September 9, 1991 and reply comments on or before September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 632-6302.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant as follows: Lawrence J. Bernard, Jr., Ward & Mendelsohn, P.C., 1100 17th Street NW., Washington, DC 20036 (Counsel for the petitioner).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Request for Supplemental Information, MM Docket No. 90-163, adopted July 5, 1991, and released July 17, 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. 91-17399 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Threatened Status for a Plant, Sidalcea nelsoniana (Nelson's checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed threatened status for a plant, *Sidalcea nelsoniana.* The hearing will allow all interested parties to submit oral or written comments on the proposals. In addition, the Service extends the public comment period from August 6, 1991 to August 19, 1991.

DATES: The public hearing will be held from 7 p.m. to 9 p.m. on Thursday, August 8, 1991, in McMinnville, Oregon. Comments from all interested parties must be received by August 19, 1991. any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held in the McMinnville Community Center, room 203, 600 N. Evans, McMinnville, Oregon. Written comments and materials should be sent directly to Mr. Russell Peterson, Filed Supervisor, Portland Field Station, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Portland, Oregon 97266. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Parenti, Botanist, Boise Field Station, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705 (208/334-1816).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea nelsoniana, (Nelson's checker-mallow) in the mallow family (Malvacease), is a perennial herb with pinkish-lavender to pinkish-purple flowers borne in clusters at the end of 1 to 2½ feet tall stems. The species is threatened primarily by development, habitat conversion to agricultural lands, logging, recreational activities, and construction of water impoundments. A proposed rule to list *Sidalcea nelsoniana* as a threatened species was published in the **Federal Register** on June 7, 1991 (56 FR 26373).

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1533(b)(5)(E)), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On June 25, 1991, the Service received a written request for public hearing from Jack Nicholls of McMinnville, Oregon. As a result, the Service scheduled a public hearing for August 8, 1991, from 7 p.m. to 9 p.m. in the McMinnville Community Center, room 203, 600 N. Evans, McMinnville, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. there are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. The comment period closes on August 19, 1991. Written comments should be submitted to the Service at the address in the **ADDRESSES** section.

Author

The primary author of this notice is Ms. Teresa A. Nichols, Portland Filed Station (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

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

Dated: July 16, 1991.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service

[FR Doc. 91-17416 Filed 7-22-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fuzzy Bighorn (FY 93) Timber Sale, Clearwater National Forest, Clearwater County, ID; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impact of proposed actions to harvest timber, build roads, and regenerate new stands of trees in Fuzzy Creek, Mill Creek, Bighorn Creek, small draingages feeding into Weitas Creek, and small drainages feeding into the North Fork of the Clearwater River between the confluence with Orogrande Creek and with Weitas Creek. The analysis area consists of approximately 6,600 acres and is located approximately 36 air miles northeast of Kamiah, Idaho (75 air miles east of Lewiston, Idaho). Portions of the proposed actions are located within the northwest corner of the 235,510 acre Bighorn-Weitas Roadless Area (#01-306).

DATES: Written comments concerning the scope of the analysis should be received on or before September 6, 1991. Public meetings are scheduled for 7 p.m. August 5, 1991 at the Kamiah Grange Hall, Route 12, Kamiah, Idaho and at 7 p.m. August 6, 1991 at the Community Center, 1424 Main St., Lewiston, Idaho.

ADDRESSES: Written comments should be sent to: Dallas Emch, District Ranger, Pierce District, Kamiah Ranger Station, P.O. Box 308, Kamiah, Idaho 83536.

FOR FURTHER INFORMATION: Specific questions about the proposed action, analysis and EIS should be directed to David Seesholtz, District NEPA Coordinator, Pierce District, Phone (208) 935-2513.

SUPPLEMENTARY INFORMATION: The Fuzzy Bighorn Timber Sale will be administered by the Pierce Ranger District of the Clearwater National Forest, Clearwater County, Idaho. Because of the potential for significant impacts resulting from the proposed action (as defined by 40 CFR 1508.27), an Environmental Impact Statement (EIS) will be prepared. The Forest Service will be the lead agency in preparation of the EIS. The EIS will tier to the Clearwater Forest Plan (September 1987), which provides the overall gudiance (Goals, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for the area. The principle desired future condition for the area is to provide sustained big game forage interspersed with thermal/hiding cover while providing for sustained timber production on suitable timber lands. The Fuzzy Bighorn Timber Sale is proposed as a means of achieving the desired future condition for the area. The sale is located within five management areas. The purpose and goals for the proposed actions are specifically defined by these mangement areas and include:

Management Area E1—Provide an optimum, sustained production of wood products through harvests that fully realize site potential and result in healthy, vigorous stands. Timber production is to be cost effective and provide adequate protection of soil and water quality. Elk is to be managed based on physiological and ecological needs, primarily through limited road closures.

Management Area C3—Provide winter range and thermal cover for elk on steep breaklands with south exposures supporting suitable browse stands.

Management Area C4—Provide sufficient forage and thermal cover for existing and projected big game populations which achieving timber production outputs.

Management Area C8S—Maintain high quality wildlife and fishery objectives while producing timber from the productive Forest land. Manage for elk summer range and high fishery stream values. These objectives can be met by modifying timber practices and with restrictive road closures.

Management Area M2—Provide for the protection and enhancement of riparian dependent resources. Management activities can include timber harvest, grazing and recreation as long as these practices enhance and protect the riparian values.

The western boundary of the Fuzzy Bighorn Timber Sale starts at the confluence of the North Fork of the Clearwater River and Orogrande Creek and runs southerly along Forest Road 250 adjacent to Orogrande Creek to approximately the intersection with Forest Road 660. The southern boundary then runs easterly following ridgelines toward Cabin Point and then follows drainage features to the confluence of Bighorn Creek and Weitas Creek. The western boundary runs north adjacent to Weitas Creek to its confluence with the North Fork of the Clearwater River. The northern boundary then heads west adjacent to the North Fork of the Clearwater River to its confluence with Orogrande Creek. Approximately 5,400 acres of the 6,600 acres within the timber sale area are within the boundary of the Bighorn-Weitas Roadless Area. The geographic scope of analysis will depend upon the resource, and may require analysis beyond the timber sale boundary. For example, elk habitat effects will be analyzed basd on the Elk Habitat Unit for the area, watershed effects downstream of the project boundary will be modelled, and the effects on roadless character will include the entire Bighorn-Weitas Roadless Area (235,510 acres).

The Pierce District is currently preparing an Environmental Assessment on the proposed Orogrande Timber Sale that will involve harvesting approximately 1,000 acres of timber within the 39,000 acre analysis areas. This area is located immediately south of the Fuzzy Bighorn Analysis Area.

Preliminary issues identified as a result of internal scoping of the Fuzzy Bighorn Timber Sale include:

- The efficiency and cost-effectiveness of the timber sale.
- The productivity of timber growth on timber management lands.
- The need for alternative yarding procedures to effectively harvest steep slopes.
- The effect of any management activities on the roadless character of the Bighorn-Weitas Roadless Area.

• Management of old growth stands for viable populations of dependent species.

• Protection and enhancement of elk security cover on summer range.

• Potential effect on threatened or endangered species, particularly the gray wolf.

• The protection of watershed values as they relate to riparian zones and fish productivity.

• The protection and enhancement of visual quality.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. For most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this Notice in the **Federal Register.** Information received will be used in the preparation of the Draft EIS. This preparation includes the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues of minor importance, or those covered by previous relevant environmental analysis.
4. Identification of reasonable alternatives to the proposed action.
5. Identification of the potential environmental effects of the alternatives.

The analysis will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative, in which all harvest and regeneration are deferred. Other alternatives will consider various levels and locations of harvest and regeneration in response to issues and non-timber objectives.

The analysis will evaluate the environmental effects of each alternative. This analysis will be consistent with the standards and management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of those mitigation measures will be disclosed.

Agencies and other interested publics are invited to visit with Forest Service officials at any time during the process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process (the next 45 days) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and be available for public review in early January 1992. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. To be the most help, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several federal court decisions related to public participation in the environmental review process. First, reviewers of the draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Second, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The Final EIS is expected to be released March 30, 1992. The Forest Supervisor for the Clearwater National Forest who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: July 11, 1991.

Win Green,

Forest Supervisor, Clearwater National Forest.

[FR Doc. 91-17426 Filed 7-22-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Elizabeth Mathews (P323A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

1. *Applicant:* Elizabeth A. Mathews, University of Alaska Southeast, Department of Education, Liberal Arts and Science, 11120 Glacier Hwy., Juneau, AK 99801.
2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.
3. *Name and Number of Marine Mammals:* 700 humpback whales *(Megaptera novaeangliae).*
4. *Type of Take:* The applicant proposes to take by harassment up to 300 humpback whales in Hawaii and 400 in Alaska. Animals will be taken during the photo-identification studies and collection of sloughed skin after whales dive. Phase I will determine genetic relationships using sloughed skin. Phase II will evaluate the reproductive success of certain male humpback whales using a combination of photo-ID and analysis of the genetic relationship of carefully chosen individuals.
5. *Location and Date of Activity:* Activities will occur in Hawaii from November to May and in Alaska from April to October 1992.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S.

Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Alaska Region, National Marine Fisheries Service, Fed. Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/568-7221);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196);

Coordinator Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822-2396 (808/944-8831).

Dated: July 15, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-17411 Filed 7-22-91; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON AGRICULTURAL WORKERS

Workshops and Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of Workshops and Hearing.

SUMMARY: The Commission on Agricultural Workers will hold two workshops and a public hearing in Rochester, New York on August 20-21, 1991. The first workshop will be on farm labor contracting and will be followed by a public hearing on agricultural labor issues in the state of New York. The second workshop will be on possible regionally based foreign worker programs.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor.

The workshops and hearing will be open to the public.

DATES: August 20, Workshop (Farm Labor Contracting)—8:30 a.m.-11:30 a.m., Hearing—1 p.m.-6:30 p.m. August 21, Workshop (Regional Options for Foreign Worker Programs)—8:30 a.m.-11:30 a.m.

ADDRESSES: August 20-21—Exchange-Fairfax Room, Holiday Inn-Genesee Plaza, 120 Main Street East, Rochester, New York.

FOR FURTHER INFORMATION CONTACT: Brett Endres, telephone (202) 673-5348.

Dated: July 17, 1991.

Aaron Bodin,

Executive Director.

[FR Doc. 91-17446 Filed 7-22-91; 8:45 am]

BILLING CODE 6820-62-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Exemption of Quota and Visa Requirements for Certain Textile Products from the United Mexican States

July 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting certain products from quota and visa requirements.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice was published in the **Federal Register** on May 31, 1990 (55 FR 22058) requesting comment on the proposed elimination of quota and visa requirements for textile products which are sent from the United States to Mexico for laundering.

Effective August 1, 1991, textile products which are used or visibly worn and are sent from the United States to Mexico for laundering and then returned to the United States will be exempt from quota and visa requirements. This action only exempts those textile articles classified under 9802.00.50 of the Harmonized Tariff Schedule. However, new textile articles which are subjected to laundering and all textile articles,, either which are subjected to dry cleaning, bleaching, stone-washing, acid washing, or permapressing shall remain subject to existing quotas and visa requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 22, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and certification requirements for certain cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in Mexico.

Effective on August 1, 1991, textile products which are used or visibly worn and are sent from the United States to Mexico for laundering and then returned to the United States will be exempt from quota and visa requirements. This action only exempts those articles classified under 9802.00.50 of the Harmonized Tariff Schedule. Shipments of the above-mentioned textile articles which are imported to the United States prior to August 1, 1991 after being laundered in Mexico shall remains subject to existing quota and visa requirments.

New textile articles which are subjected to laundering and all textile articles, which are subjected to dry cleaning, bleaching, stone-washing, acid-washing or permapressing shall remain subject to existing quota and visa requirments.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-17418 Filed 7-22-91; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations With the Philippines

July 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 28, 1991, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, the United States Government requested consultations with the Government of the Philippines with respect to women's and girls' coats in Category 835.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 835, the Government of the United States has decided to control imports during the prorated period which began on June 28, 1991 and extends through September 25, 1991.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 835, produced or manufactured in the Philippines and exported during the prorated period beginning on September 26, 1991 and extending through December 31, 1991, of not less than 5,659 dozen.

A summary market statement concerning Category 835 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 835, under the agreement with the Government of the Philippines, or to comment on domestic production or availability of products included in Category 835, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 835. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Philippines

Category 835—Women's and Girls' Silk-Blend and Non-Cotton Vegetable Fiber Coats

June 1991

Import Situation and Conclusion

U.S. imports of women's and girls' silk blend and non-cotton vegetable fiber coats, Category 835, from the Philippines, reached 17,747 dozen in the year ending March 1991, more than two and a half times the 6,776 dozen imported during the same period a year earlier. In the first three months of 1991, imports of Category 835 from the Philippines reached 15,903 dozen, almost three and a half times the 4,614 dozen imported during the first three months of 1990, and nearly two and a half times Philippines' total 1989 Category 835 exports to the United States.

The imports of women's and girls' coats in Category 835 are of silk blend and non-cotton vegetable fiber, and compete directly with domestically produced cotton and man-made fiber women's and girls' coats (Category 335/635). The U.S. market for cotton and man-made fiber women's and girls' coats is being disrupted by imports. The sharp and substantial increase in Category 835 imports from the Philippines is causing a real risk of disruption in the U.S. market for cotton and man-made fiber women's and girls' coats.

U.S. Production, Import Penetration and Market Share

U.S. production of cotton and man-made fiber women's and girls' coats, Category 335/635, dropped 42 percent between 1987 and 1990, falling from 6,724 thousand dozen in 1987, to 3,908 thousand dozen in 1990. The ratio of imports to domestic production in Category 335/635 increased to 193 percent in 1990, up 95 percentage points from the 98 percent in 1987. The domestic manufacturers' share of this market fell from 50 percent in 1987 to 34 percent in 1990, a decline of 16 percentage points.

U.S. imports of silk-blend and non-cotton vegetable fiber women's and girls' coats, Category 835, surged in 1991 reaching 208,504 dozen in January-March 1991, 91 percent above the January-March 1990 level and 94 percent of the total 1990 level. The surge in 1991 caused the year-ending March 1991 imports to increase by 71 percent over the year-ending March 1990 level.

When imports of the directly competitive Category 835 are included in the market analysis, the import to production ratio increases by an average of 5 percentage points and the U.S. manufacturers' share of the market decreases by one percentage point. If Category 835 imports continue to increase at the January-March 1991 rate, the import to production ratio can be expected to increase by an additional 16 percentage points in 1991. Also, the domestic manufacturers' share of the U.S. market would decline by additional percentage points in 1991.

Duty-Paid Value and U.S. Producers' Price

Virtually all of Category 835 imports from the Philippines during the year ending in March 1991 entered under HTSUSA number 6204.39.4060—women's and girls' suit-type jackets and

blazers of non-cotton vegetable fibers. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for directly competing cotton and man-made fiber garments.

Committee for the Implementation of Textile Agreements

July 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Textile Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 24, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 835, produced or manufactured in the Philippines and exported during the period beginning on June 28, 1991 and extending through September 25, 1991, in excess of 6,211 dozen. [1]

Textile products in Category 835 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established in the directive dated December 12, 1990 for the period January 1, 1991 through December 31, 1991.

Textile products in Category 835 which have been exported to the United States prior to June 28, 1991 shall not be subject to the ninety-day limit established in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-17417 Filed 7-22-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after June 27, 1991.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement—part 215, Contracting by Negotiation; part 237, Service Contracting; part 252.237-XXX, Uncompensated Overtime; and part 252.237-XXX Identification of Uncompensated Overtime.

Type of Request: Expedited Submission—Approval Date Requested: August 2, 1991.

Average Burden Hours/Minutes Per Response: 30 minutes.

Responses Per Respondent: 5.

Number of Respondents: 350.

Annual Responses: 1,750.

Needs and Uses: Section 834 of the Fiscal Year 1991 Department of Defense (DoD) Authorization Act (Pub. L. 101-510) requires the Secretary of Defense to establish criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees. Pursuant to this requirement, DoD proposes to require offerors to identify any hours in excess of 40 hours per week included in their proposal or subcontractor's proposal.

Affected Public: Businesses or other for-profit; and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 18, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-17440 Filed 7-22-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586, 12708, and 12767. The proposed changes are part of the 1991 annual review required by the Manual for Courts-Martial and DoD directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following rules in part II (Rules for Courts-Martial): R.C.M. 405, Pretrial investigation; R.C.M. 905, Motions generally; R.C.M. 1003, Punishments; R.C.M. 1004, Capital cases; R.C.M. 1102, Post-trial sessions; R.C.M. 1105, Matters submitted by the accused; R.C.M. 1106, Recommendation of the staff judge advocate or legal officer. The proposed changes would also amend the following rules in part III (Military Rules of Evidence): M.R.E. 305, Warnings and righs; M.R.E. 314, Searches not requiring probably cause. The proposed changes would also amend the following paragraphs of Part IV (Punitive Articles); Para. 44e—Article 119 (Manslaughter)—Maximum punishment; Para. 45e—Article 120 (Rape and carnal knowledge)—Maximum punishment; Para. 51e—Article 125 (Sodomy)—Maximum punishment; Para. 85e—Article 134 (Homicide, negligent)—Maximum punishment.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be

examined at Headquarters, United States Air Force, Office of The Judge Advocate General, Military Justice Division (JAJM), Bldg. 5683, Bolling Air Force Base, Washington, DC 20332–6128. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major John E. Petrow.

DATE: Comments on the proposed changes must be received not later than October 7, 1991, for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major John E. Petrow, (202) 767–1539.

Dated: July 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17439 Filed 7–22–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. 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. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: September 5, 1991, 9 a.m.–4:30 p.m. and September 6, 1991, 9 a.m.–Noon.

ADDRESS: 555 New Jersey Avenue, NW., room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Suellen Mauchamer, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400E, Washington, DC 20208-7575, telephone: (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- NCES Role in Policy Relevant Analysis
- Updates on NCES Activities in Support of the National Education Goals, American Achievement Tests, AMERICA 2000, Education Indicators Panel
- Data Confidentiality
- Forthcoming Elementary and Secondary Education Statistics
- Student Right to Know
- Work in Progress: Statistical Standards
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400E, Washington, DC 20208–7575.

Dated: July 17, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–17471 Filed 7–22–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted the following six public information collection packages to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1980, Public Law No. 96–511. The packages cover management and procurement collections of information principally from Departmental management and operating contractors, and the public. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

DATES AND ADDRESSES: Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address not later than August 22, 1991. Mr. Ron Minsk, DOE Desk Officer, Office of Management and Budget (OIRA), room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084.

FOR FURTHER INFORMATION OF RELEVANT MATERIALS CONTACT: Ronald L. Shores, Information Management Support Division (AD–241), Department of Energy, Washington, DC 20585, (301) 353–6956.

Package title: Construction and Project Management
Current OMB no.: 1910–0200
Type of respondents: DOE management and operating contractors
Estimated number of responses: 12,818
Estimated total burden hours: 392,036
Purpose: This information is required by the Departemnt to assure that Project Management resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 25 information and/or recordkeeping requirements.

Package title: Personal Property
Current OMB no.: 1910–1000
Type of respondents: DOE management and operating contractors.
Estimated number of responses: 3,777
Estimated total burden hours: 215,397
Purpose: This information is required by the Department to assure that Personal Property resources and requiremewnts are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 29 information and/or recordkeeping requirements.

Package title: Power Marketing Administrations
Current OMB no.: 1910–1200
Type of respondents: Public and private utilities, and the general public .
Estimated number of responses: 13,328
Estimated total burden hours: 247,888
Purpose: This information is required by the Department to assure that Power Marketing resources and requirements are managed efficiently and effectively, amd exercise oversight over public and private utilities, and the general public. The package contains 23 information and/or recordkeeping requirments.

Package title: Program Management
Current OMB no.: 1910–1400
Type of respondents: DOE management and operating contractors
Estimated number of responses: 35,244

Estimated total burden hours: 133,456

Purpose: This information is required by the Department to assure that Program Management resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 60 information and/or recordkeeping requirements.

Package title: Real Property
Current OMB no.: 1910–1600
Type of respondents: DOE management and operating contractors.
Estimated number of responses: 865
Estimated total burden hours: 49,475

Purpose: This information is required by the Department to assure that Real Property resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 10 information and/or recordkeeping requirements.

Package title: Travel
Current OMB no.: 1910–2100
Type of respondents: DOE management and operating contractors.
Estimated number of responses: 12,997
Estimated total burden hours: 32,221

Purpose: This information is required by the Department to assure that travel resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 11 information and/or recordkeeping requirements.

Issued in Washington, DC, on July 16, 1991.

John J. Nettles, Jr.,

Director of Administration and Human Resource Management.

[FR Doc. 91–17476 Filed 7–22–91; 8:45 am]

BILLING CODE 6450–01–M

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AGMEF), and Lawrence Berkeley Laboratory (LBL) of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AGMEF—the University of Turabo, Metropolitan University, and the Puerto Rico Junior College. The grant renewal will continue the project through May 31, 1992. The estimated amount is $1,665,000.

PROCUREMENT REQUEST NUMBER: 05–91ER75274.001.

PROJECT SCOPE: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AGMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1991. Eligibility for this award is, therefore, restricted to JSU.

FOR FURTHER INFORMATION CONTACT: Gregory A. Mills, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831–8614, (615) 576–0951.

Issued in Oak Ridge, Tennessee, on July 12, 1991.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 91–17477 Filed 7–22–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GP91–11–000]

Harry C. Boggs v. Columbia Gas Transmission Corp.; Complaint

July 15, 1991.

Take notice that on July 8, 1991, Harry C. Boggs (Complainant) filed a complaint against Columbia Gas Transmission Corporation (Columbia) requesting the Commission to establish procedures for resolving a dispute concerning the price of and payments for natural gas purchased by Columbia from complainant from various wells located in Braxton, Calhoun and Roane Counties, West Virginia. Complainant states that Columbia has implemented unilateral billing adjustments to recover alleged overpayments to Complainant and argues, among other things, that the amount of refunds owed by Complainant to Columbia is in dispute, that Columbia's method of adjustment (withholding payment until all claimed principal and interest are recovered) is excessive and onerous, that since the overpayments were caused by Columbia, Complainant should not be required to pay interest, and that Columbia has, as part of its billing adjustment procedure, withheld payment for deregulated gas. Complainant requests the Commission to direct Columbia to cease application of its unilateral billing adjustment, to pay complainant the amount due (but withheld) for May 1991 deliveries, and to establish a hearing, technical conference or other procedure to resolve the factual disputes between the parties as to the calculation of refunds owed.

Columbia shall respond to the complaint no later than August 12, 1991. Any person wishing to do so may also file comments concerning the complaint. All comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should be filed no later than August 12, 1991. Commentors will not automatically become parties to the proceeding. To become a party it is necessary to file a petition to intervene pursuant to section 214 of the Commission's regulations. Petitions to intervene shall be filed no later than August 12, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17406 Filed 7–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–249–003]

L'Energia, Limited Partnership Inc.; Amendment to Filing

July 19, 1991.

On July 5, 1991, L'Energia, Limited Partnership Inc., tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure of the limited partnership.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commisison, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 14 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17554 Filed 7–22–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $48,000,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Enron Corp. These procedures cover the following subsidiaries of Enron Corp.: UPG, Inc.; Northern Propane Gas Company; and Florida Hydrocarbons Company. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Applications for Refund submitted for a portion of the funds allocated to the refined products pool must be filed in duplicate, postmarked no later than April 30, 1992. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications for Refund from the refined product pool should display a reference to case number KEF–0116.

Applications for Refund from the crude oil pool should be clearly labeled "Application for Crude Oil Refund" and should be mailed to subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund from the crude oil pool must be filed in duplicate and postmarked no later than June 30, 1992. Any party who has previously filed in Application for Refund in crude oil proceedings should not file another Application for Refund from the crude oil pool. The previous crude oil Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20595, (202) 586–2390.

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $48,000,000 that has been remitted by Enron Corp. to the DOE to settle possible violations of the federal petroleum price and allocation regulations. These procedures cover the following Enron Corp. subsidiaries: UPG, Inc., Northern Propane Gas Company and Florida Hydrocarbons Company. The DOE is currently holding the funds in an interest bearing account pending distribution.

The OHA has decided to divide the funds into a refined products pool and a crude oil pool. The OHA will distribute these funds in accordance with the DOE's subpart V refund procedures, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Applications for Refund from the refined product pool will be accepted from customers who purchased controlled refined petroleum products from the covered entities during the refund period. Applications for Refund from the refined product pool must be postmarked no later than April 30, 1992 to meet the filing deadline.

Applications for refund from the crude oil pool of funds must be postmarked no later than June 30, 1992. As we stated in the Decision, any party who has previously submitted a refund Application in the crude oil refund proceedings should not file another Application for Refund in the crude oil proceedings. That previous Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: July 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of firm: Enron Corp.
Date of filing: September 14, 1988.
Case number: KEF–0116.

On September 14, 1988, the Economic Regulatory Administration (ERA) filed a Petition with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) requested that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings between Enron Corp. (Enron) and the DOE. 10 CFR, Part 205, subpart V. On April 10, 1990, the OHA issued a Proposed Decision and Order (PD&O) that tentatively set forth procedures for the disbursement of the Consent Order funds. 55 Fed. Reg. 15006 (April 20, 1990). We established a 30 day period for the submission of comments regarding the proposed procedures. We received a number of comments. The present Decision will address these comments and set forth final procedures for the distribution of the Enron Consent Order funds.

I. Background

Enron was a "refiner", "reseller", "retailer", "gas plant operator" and "gas plant owner" as those terms are defined in 10 CFR 212.31 and 212.162. Enron was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 10 CFR parts 211 and 212. Enron is the result of a 1985 merger between Internorth, Inc. and Houston Natural Gas Corp. During the period January 1, 1973 through January 27, 1981, Enron engaged in, among other things, the sale, refining and processing of natural gas liquids (NGLs) and natural gas liquid products (NGLPs). An ERA audit of Enron records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR part 212, subparts E and K, in certain sales of Enron's NGLs and NGLPs during the period September 1973 through October 1978 (the audit period). Consequently, the ERA issued a Proposed Remedial Order (PRO) to Enron on September 1, 1987, alleging that Enron committed pricing violations in its sales of NGLs and NGLPs during the audit period.[1]

In order to settle all claims between Enron and the DOE, the two parties entered into a Consent Order (the Consent Order) that resolves all matters relating to Enron's compliance with the federal petroleum price and allocation regulations during the period January 1, 1973 through January 27, 1981 (the Consent Order period). The Consent Order became final on July 27, 1988. Execution of the Consent Order is neither an admission by Enron nor a finding by the DOE of any violation by Enron of any statute or regulation. Consent Order at ¶ 503.

Under the terms of the Consent Order, Enron deposited $48,000,000 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. These monies ($48,000,000) were paid in full on August 26, 1988. This Decision and Order sets forth the OHA's plan for distributing these funds to

[1] These alleged violations were committed by UPG Inc., a wholly owned subsidiary of Enron's predecessor, Internorth, Inc.

qualified purchasers of Enron's covered products.

II. Summary of Proposed Refund Procedures

As we indicated in the PD&O, the Enron Consent Order provides for a global settlement. Therefore, the Consent Order resolves all alleged and potential regulatory violations of the regulations governing both crude oil and refined petroleum products. The Consent Order provides no guidance regarding the allocation of the funds between crude oil and refined products. Nevertheless, based upon the global language of the Consent Order, we proposed to divide the Consent Order fund into two pools. We proposed to put $9,600,000 in a crude oil pool, and $38,400,000 in a refined product pool. We proposed to distribute the Enron crude oil monies in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986), using the procedures described in *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988).

The PD&O also outlined procedures under which purchasers of Enron's refined covered products could apply for refunds. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow the OHA to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to both aspects of the refund procedures.

First, we presumed that the alleged refined product overcharges were spread evenly over all of Enron's sales of refined covered products during the Consent Order period. We therefore proposed that an applicant's potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of Enron's refined covered products that the claimant purchased during the Consent Order period. The resulting figure is referred to as the claimant's "volumetric share" of the Enron Consent Order funds. Because an applicant may have been overcharged by more than the volumetric amount, we proposed that an applicant could rebut the volumetic refund presumption by showing that it sustained a greater amount of overcharge.

Because it is potentially difficult, time-consuming, and expensive to demonstrate that one was forced to absorb any overcharges by Enron, we proposed to adopt a number of presumptions concerning injury. We proposed that resellers and retailers claiming refunds of $10,000 or less, end-users, agricultural cooperatives, and certain types of regulated firms would be presumed injured by Enron's alleged overcharges. We proposed that refiners, resellers and retailers seeking refunds greater than $10,000 could receive a miximum refund of $50,000 based upon 60 percent of their volumetric share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from Enron were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of these injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by Enron in order to receive their full volumetric shares of the Enron Consent Order funds.

III. Comments on the Proposed Decision and Order

As we stated earlier, the PD&O was published in the **Federal Register** on April 20, 1990, and comments on the proposed procedures were solicited. 55 FR 15006 (April 20, 1990). We received a number of comments on the proposed procedures. We will address the comments and any changes made to the PD&O below.

A. Whether Sales by Certain Entities in the Enron Family Should be Covered Under the Present Refund Procedures

Michael O'N. Barron, Attorney for H.C. Oil Company, Home Petroleum Corporation, Liquid Petroleum Corporation, NGL Supply, Inc. and Glenn B. Eddy, assignee of G.A. Eddy & Sons, Inc., has filed comments concerning the Enron entities that should be covered by this refund proceeding. Mr. Barron argues that because of several prior Consent Orders, the OHA should not have included all of Enron's subsidiary firms as covered entities for purposes of this refund proceeding. Vanguard Petroleum Corporation (Vanguard) concurs with Mr. Barron's comments on this matter. The effect of Mr. Barron's suggested adjustment would be to limit eligibility for refunds and raise the volumetric refund amount.

The present Consent Order defines "Enron" to include Enron and all of its subsidiaries, affiliates (including the acts of such companies before they were subsidiaries or affiliates), prior subsidiaries, predecessors, successors in interest and their petroleum-related activities. Consent Order at ¶ 203. The following is a list of the Enron entities that made sales of controlled refined products to unrelated third parties: (1) The Houston Natural Gas Corp. "group"—HNG Petrochemicals, Inc., HNG Propane Company, HNG Products Company, Florida Hydrocarbons Company (acquired from Continental Resources Company in 1984) (2) The Internorth "group"—P&O Falco, Inc. (Falco), UPG, Inc., Northern Propane Gas Company (Northern Propane). Under normal circumstances, based upon the Consent Order's broad definition of Enron, customers that purchased covered products from the entities listed above would be eligible to claim a refund in this proceeding for purchases made during the Consent Order period. However, several Consent Orders have previously settled the potential liability of certain Enron entities. We do not believe that any portion of the funds collected for the current proceeding were in settlement of these previously covered violations. These entities have already been absolved of their liability for sales of certain covered refined products and the DOE has conducted refund proceedings pursuant to these prior Consent Orders. These prior proceedings gave the customers of these entities an opportunity to apply for refunds. Therefore, it would be inappropriate to allocate any of the funds collected in this proceeding to those entities' sales.

In 1985, UPG, Inc. entered into a Consent Order with the DOE in settlement of all of the then pending and potential administrative claims and disputes concerning Falco's compliance with the federal petroleum price and allocation regulations during the period from August 1, 1973 through January 27, 1981. On October 1, 1986, the OHA issued a decision and order implementing procedures for the distribution of the Consent Order funds collected in settlement of Falco's potential liability to the purchasers of Falco's refined petroleum products. *UPG, Inc.*, 15 DOE ¶ 85,002 (1986)

In 1981 Houston Natural Gas Corporation (Houston Natural Gas) entered into a Consent Order that settled the claims and disputes between it (including all of its subsidiaries and divisions at the time the Consent Order was entered: HNG Petrochemicals, Inc.; HNG Propane Company; HNG Products Company) and the DOE regarding the pricing of all controlled refined products during the period from September 1, 1973 through January 27, 1981. On August 10, 1984, the OHA issued a decision and order implementing procedures for the distribution of the Consent Order funds collected from Houston Natural Gas. *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,214 (1984) (*Texas*).

Therefore, the customers of Falco and the customers of the Houston Natural Gas entities covered by the 1981 Consent Order have had an opportunity to receive a refund for their purchases from those entities. For this reason, the OHA finds that these entities should not be covered by the present refund procedures. Accordingly, we will deduct the volumes of products sold by these entities from our calculation of the volumetric refund amount.

Additionally, on May 18, 1977, the DOE issued a Notice of Probable Violation (NOPV) to Florida Gas Company (later to become Continental Resources Company) and its subsidiary Florida Hydrocarbons Company (Florida Hydrocarbons). In December 1979, Continental Resources Company entered into a Consent Order with the DOE in settlement of the NOPV and all issues pertaining to its compliance with the federal petroleum price regulations and the prices charged in the sale of covered products during the period from August 19, 1973 through August 31, 1979. On August 10, 1984, the OHA issued a decision and order establishing procedures for the distribution of the Continental Resources Company Consent Order funds to purchasers of Florida Hydrocarbons' covered products during the period from August 19, 1973 through August 31, 1979. *Texas,* 12 DOE at 88,221. Therefore, Florida Hydrocarbons' customers have had an opportunity to receive a refund on the covered products purchased up to August 31, 1979. Under these circumstances, the OHA believes that only covered products sold by Florida Hydrocarbons between September 1, 1979 and January 27, 1981 should be covered in the present refund proceeding. Accordingly, we will adjust the volumetric refund amount to reflect the fact that Florida Hydrocarbons' sales are only covered during the period from September 1, 1979 through January 27, 1981.

Because of these prior settlements, we have determined that only UPG, Inc.'s and Northern Propane's sales of controlled refined products should be fully covered by the present proceeding. We have also determined that Florida Hydrocarbons' sales should be covered for the period from September 1, 1979 through January 27, 1981. Accordingly, we will eliminate the sales volumes of HNG Petrochemicals, Inc., HNG Propane Company, HNG Products Company and Falco from our calculations of the volumetric refund amount. We will also reduce the sales volume of Florida Hydrocarbons to reflect that its sales are only covered during the period from September 1, 1979 through January 27, 1981.

B. Whether the OHA should Allocate 20 Percent of the Consent Order funds to the Crude Oil Pool

The Consent Order settles:

> All civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, * * *, and Enron, * * *, relating to Enron's compliance with the federal petroleum price and allocation regulations, * * *, during the period January 1, 1973 through January 27, 1981 * * *.

Consent Order at ¶ 101. The phrase federal petroleum price and allocation regulations is defined by the Consent Order as:

> All statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs administered by the DOE. The federal petroleum price and allocations regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150 and 10 CFR parts 205, 210, 211, 212 and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocations regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

Consent Order at ¶ 203. This language was intended to cover any violations by Enron of the regulations governing crude oil as well as refined products. The Consent Order does not, however, give the OHA any guidance regarding the proper allocation of the Consent Order funds between refined products and crude oil. The Proposed Consent Order does state that "[t]he major regulatory areas of disputes[sic] between ERA and Enron concerned reallocation of costs permitted under the regulations, the proper computation of the May 15, 1973 weighted average sales price for one of its propane classes of purchaser, and the applicability of 10 CFR, subpart K, to a portion of Enron's sales of NGL's and NGLP's. 53 FR 22701 at 22702 (June 17, 1988). Because the major areas of dispute concerned Enron's compliance with the regulations as they applied to its NGLs and NGLPs operations, the OHA proposed allocating 80 percent, $38,400,000 plus accrued interest, of the Consent Order funds to a refined product pool and 20 percent, $9,600,000 plus accrued interest, of the Consent Order funds to a crude oil pool.

Three commentators have objected to our proposed allocation of 20 percent of the Consent Order funds to a crude oil pool. Mr. Barron objects to the proposed allocation on the following grounds: (1) Sales of crude oil by the Internorth group or Houston Natural Gas group have been covered by prior Consent Orders; and (2) the $9,600,000 allocated to the crude oil pool bears no reasonable relation to the volume of crude oil products resold. Vanguard believes that the allocation may be overstated and unjustified based upon Mr. Barron's comments. Eric T. Small of Energy Refunds, Inc. believes that the allocation is in error, because he has no evidence that the Enron entities made any sales of condensate.

We do not believe that Mr. Barron has properly characterized the nature of the prior Consent Orders with the Enron entities. Mr. Barron states that neither Northern Propane, UPG, Inc. nor the Houston Natural Gas group were producers or resellers of crude oil. He states that, based upon the evidence, the only Enron entity that could have resold crude oil is Falco. *UPG, Inc.,* 15 DOE at 88,005. He believes that certain other Enron entities may have sold condensate.

We do not agree with Mr. Barron's assertion that only Falco sold crude oil. The 1981 Houston Natural Gas Consent Order states that it did not cover certain first sales of crude oil. Therefore, it is at least likely that one of the Houston Natural Gas entities covered by that Consent Order sold crude oil. Additionally, in 1981, Internorth entered into a Consent Order with the DOE that covered sales of condensate by Internorth entities. The Internorth Consent Order specifically states that it does not cover the resale of crude oil. Accordingly, we believe that at least one Internorth entity resold crude oil. With regard to Mr. Small's comments, it appears clear that the Enron entities sold condensate We do, however, agree with Mr. Small that the 1981 Consent Order with Internorth resolves the issue regarding the Internorth entities' sales of condensate.

As we stated in section III.A above, Falco entered into a Consent Order in 1985. That 1985 Consent Order purported to cover crude oil as well as refined product violations. Therefore, we believe that the DOE Enron would not have considered Falco refined product or crude oil violations when they entered into the present Consent

Order. Just as we decided that Falco's refined products should not be covered in this proceeding, we have decided that its potential crude oil violations should not be covered.

Accordingly, we agree that certain areas of potential liability for crude oil violations by the Enron entities have been resolved. Nevertheless, we do not agree that none of the Consent Order funds should be allocated to a crude oil pool. We believe that there are certain areas of crude oil activity where the Enron entities could have been potentially liable prior to the execution of the present Consent Order.

Because much of the Enron entities' potential liability for crude oil violations has been resolved by prior Consent Orders, we have, however, decided that it is appropriate to reduce the amount of the Consent Order fund allocated to the crude oil pool. Accordingly, based upon our experience in these matters, we believe that it is reasonable to reduce the allocation from 20 percent of the Consent Order funds to 10 percent.

C. Comments Concerning the Spot Purchaser Presumption of Non-Injury

Several commentators have also objected to our proposal to adopt the rebuttable presumption that spot purchasers, resellers or retailers that made only sporadic "spot" purchases from Enron, were not injured by their purchases from Enron. We have consistently determined that spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full price of the purchases to their own customers. The OHA has utilized this spot purchaser presumption of non-injury in numerous special refund proceedings. *E.g., Sauvage Gas Co.*, 17 DOE ¶ 85,304 (1988) (*Sauvage*). Mr. Barron and Mr. Small do not want the presumption applied in this proceeding.[2]

Mr. Barron asserts that the definition of a spot purchaser is impermissibly vague and the standards for rebuttal are discriminatory and unreasonable. He believes that the application of the presumption in prior proceedings has been inconsistent and arbitrary. Accordingly, he urges the OHA to abandon the presumption. Alternatively, Mr. Barron suggests that the OHA tailor guidelines for this proceeding in accordance with the circumstances of Enron, its market and customers.

The OHA does not agree with Mr. Barron's characterization of the OHA's spot purchaser presumption. Mr. Barron has made, and the OHA has addressed, these same objections to the spot purchaser presumption in a Motion for Reconsideration filed in another proceeding. *Sauvage Gas Co./NGL Supply, Inc.*, 19 DOE ¶ 85,622 (1989) (*Supply*).

Mr. Barron asserts that the spot purchaser presumption is impermissibly vague. The term spot purchase is commonly used and understood in the petroleum industry to mean a contract for the purchase and sale of petroleum products on a short term basis. *Id.* at 89,142. The OHA has interpreted the term spot purchaser to mean any firm that purchased significant volumes of covered products from a supplier on a sporadic or isolated basis outside of a long term supply obligation. *Id.* Although the determination whether an applicant is a spot purchaser is made on a case-by-case basis, the term is sufficiently well defined to allow applicants to understand the theoretical basis of the presumption. The OHA examines the circumstances of each case to make an initial determination whether the applicant's purchases were likely to have been spot purchases. Where it appears likely that an applicant's purchases were spot purchases, the applicant is generally notified of our tentative conclusion and offered an opportunity to show either that it was not a spot purchaser or that it was injured by its spot purchases. Since this analysis focuses on the fundamental refund issue, *viz.*, whether the applicant was injured, there is no merit to the claim that it is based on an impermissibly vague definition. For this reason, the OHA rejected Mr. Barron's argument in *Supply* that the spot purchaser presumption is impermissibly vague. *Id.* at 89,143.

Mr. Barron also argues that the OHA's required proof for a rebuttal is discriminatory and unreasonable. He cites the two elements that spot purchasers have shown in prior proceedings to rebut the presumption. These elements are: (1) The spot purchases were made to maintain supplies to base period customers; and (2) the spot purchaser was forced by market conditions to resell the product at a loss. *E.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85, 170 (1986). Mr. Barron is erroneously asserting that the OHA requires a spot purchaser to prove those elements to rebut the presumption. We stated in *Supply* that those two elements "are not the only grounds for rebutting the spot purchaser presumption. Any convincing evidence establishing that a spot purchaser was in fact injured by the alleged overcharges of a consent order firm would suffice to rebut the presumption." *Supply*, 19 DOE at 89,141 N.2.

Finally, we reject Mr. Barron's suggestion that we establish specific guidelines to determine whether a purchaser is a spot purchaser. Mr. Barron believes that the OHA may apply the presumption inconsistently and arbitrarily in this proceeding if we do not establish specific guidelines. Mr. Barron is simply stating his unsubstantiated opinion. He does not cite to any cases as examples of how the OHA has applied the presumption inconsistently or arbitrarily in prior proceedings. In *Supply*, in response to Mr. Barron's unsupported assertion that the OHA has inconsistently applied the spot purchaser presumption, we stated that "the determination of whether a[sic] individual's purchases from a particular supplier are spot purchases is a question of fact and therefore must be made on a case-by-case basis." *Id.* at 89,143.

As support for his suggestion, Mr. Barron explains that in 1978, because of DOE regulations, UPG, Inc. stopped selling NGLs to its affiliate Northern Propane. Up to that time, Northern Propane had been purchasing approximately 300 million gallons of NGLs per year from UPG, Inc. In 1979 and 1980, UPG, Inc. sold the NGLs that had been going to Northern Propane directly to independent retailers. Mr. Barron asserts that these retailers are not spot purchasers. He is concerned, however, that their claims will be denied as spot purchases. Mr. Barron submitted a letter that he received from Chalmer Jaynes, a former executive with Skelgas, in support of his position that these retailers were not spot purchasers. Letter from Chalmer Jaynes to Michael O'N. Barron (September 13, 1989). Mr. Jaynes describes various circumstances under which a firm in the propane industry might make purchases that, in his opinion, are not spot purchases even though they might appear to be. However, there is nothing in Mr. Barron's comments or Mr. Jaynes' letter that convinces us to abandon the case-by-case method in this proceeding. Under the case-by-case method, we consider the circumstances under which a claimant made its purchases and any information submitted by an applicant that might aid our determination concerning whether its purchases were

[2] Vanguard simply urges that the presumption be applied "in an equitable and non-arbitrary manner." Vanguard, however, does not make any specific arguments that we can address. Nevertheless, we can assure Vanguard that we will apply the presumption in an equitable and non-arbitrary manner.

spot purchases. We believe that the case-by-case method is the appropriate way to evaluate the circumstances of each claimant that made purchases in 1979 and 1980 only.

Mr. Small does not believe that the spot purchaser presumption should be applied in this proceeding because "in the NGL business large amounts are purchased at one time and stored until needed for demand." This statement is his sole reason for the elimination of the spot purchaser presumption from this proceeding. In response to Mr. Small's comment, it will suffice to state that we will make a determination on a case-by-case basis.

We have reviewed all of the comments that we received regarding the spot purchaser presumption. The comments do not present any legal or factual arguments that convince us to eliminate the presumption from the present proceeding. Nor do the comments convince us that we should alter either the way that we determine whether an applicant is a spot purchaser or the way that we determine whether a spot purchaser was injured. Accordingly, the spot purchaser presumption will be applied on a case-by-case basis in this proceeding in accordance with OHA precedent.

D. Comments Concerning the Small Claims and Mid-Range Presumptions of Injury

Both Mr. Small and Mr. Barron have filed comments regarding the proposed $10,000 maximum small claims refund and the 60 percent mid-range presumption of injury. For the reasons discussed below, we have determined that we will adopt these presumptions as proposed.

Mr. Small and Mr. Barron both concur with our proposal to adopt a $10,000 maximum refund under the small claims presumption of injury. In many prior proceedings, we established a small claims maximum of $5,000. *E.g., Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). However, the volumetric factor of $.004323 estimated for the Enron PD&O is significantly higher than in most proceedings. Therefore, we recognized in the PD&O that the allocable share of many small retailers, resellers and refiners who would typically qualify for a refund at or below the usual small claims amount of $5,000 will be well above that amount in this proceeding. In several recent proceedings that had relatively high volumetric factors, we determined that it was appropriate to adopt a $10,000 small claims maximum. *E.g., Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991) (*Quintana*). In *Quintana*, we found that because the volumetric factor of $.001575 was relatively high, it would increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their full allocable share. *ID.* at 88,115. We determined that that would increase the burden on this Office because of the need to analyze more detailed injury showings and would thus slow down the evaluation of claims. Since we were faced with the same considerations in the present proceeding, we proposed a $10,000 maximum small claims refund in the PD&O.

As we discussed above, we have determined that it is appropriate to make certain changes to the PD&O that will have the effect of further increasing the volumetric refund amount in this proceeding. We have reduced the volume of covered product by excluding certain Enron entities from coverage by this proceeding. We have also increased the amount allocated to the refined products pool by reducing the portion of the Consent Order funds allocated to a crude oil pool. Since these changes to the PD&O have further increased the volumetric refund amount, we have determined that it is appropriate to adopt the small claims maximum of $10,000 as proposed. We will discuss the requirements for receiving a small claims refund below.

Mr. Small also concurs with our proposed 60 percent mid-range presumption of injury. Mr. Barron concurs with our proposal to adopt a 60 percent mid-range presumption, however, he suggests that we increase the maximum principal refund allowed under the presumption. Under the proposed 60 percent mid-range presumption, in lieu of making a detailed demonstration of injury, an applicant that claims a refund greater than $10,000 can elect to receive the greater of $10,000 or 60 percent of its allocable share for a maximum refund of $50,000. Mr. Barron suggests that the OHA increase the maxium principal refund to at least $75,000 to reflect increases in the consumer price index since 1973.

The use of the mid-range presumption reflects our conviction that large claimants were likely to have experienced some injury as a result of the alleged overcharges. In other proceedings involving NGLs and NGLPs, we determined that a 60 percent presumption for the mid-range purchasers of NGLs and NGLPs accurately reflected the amount of their injury as a result of their purchases of those products. *Sauvage*, 17 DOE ¶ 85,304; see also *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). In those proceedings, we also established a $50,000 maximum principal refund under the mid-range presumption of injury. Because almost all of Enron's sales of covered products were of NGLs and NGLPs, we have determined that it is appropriate to adopt 60 percent as the mid-range injury presumption in this proceeding.

The OHA does not, however, believe that it is necessary to increase the maximum principal refund under the mid-range presumption above $50,000. The mid-range presumption serves dual purposes. It allows larger claimants to receive a reasonable level of compensation for the loss they likely suffered without having to incur the burden and expense of making a detailed demonstration of injury. The presumption also makes the refund process more efficient by relieving the OHA of the burden of analyzing a large number of cases making detailed demonstrations of injury. *E.g., Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1990). If a large claimant does not believe that the mid-range presumption provides adequate compensation for its actual level of injury, it has the option of making a detailed demonstration of injury. The OHA believes that any claimant seeking a refund exceeding the $50,000 mid-range maximum should have the resources and incentive to make a detailed demonstration of injury. Regarding the second purpose for the mid-range presumption, Mr. Barron does not suggest, and the OHA has no reason to believe, that maintaining the $50,000 mid-range maximum will cause the OHA to be overburdened by large claimants making detailed demonstrations of injury. To increase the maximum mid-range refund above $50,000 will simply allow large claimants to receive very sizable refunds by simply providing their purchase volumes from Enron. There is nothing in Subpart V or our procedures that warrants such a result. Accordingly, we will adopt a $50,000 maximum principal refund for the mid-range presumption of injury. We will discuss the requirements for receiving a mid-range refund below.

E. The Presumption of Injury for Regulated Firms and Cooperatives

The Northern Illinois Gas Company (NIGC) has filed a comment concerning the proposed presumption for Regulated firms and Cooperatives (Cooperative presumption). Under the Cooperative presumption, in order to receive a full volumetric refund, a regulated firm or cooperative need only establish its

purchase volume and certify that it will notify its regulatory body or membership group of the receipt of the refund and that it will pass the full amount of the refund granted by the OHA through to its customers or members. NIGC filed its comment to express its support of the Cooperative presumption and urges the OHA to adopt the presumption in our final Decision and Order. The OHA has received no comments that object to the adoption of the presumption. Our experience in prior proceedings has convinced us that the Cooperative presumption provides an equitable means of refunding overcharges passed on by regulated firms and cooperatives to their customers or members. Accordingly, we are adopting the Cooperative presumption in this proceeding as proposed. We will discuss requirements for filing a claim under the Cooperative presumption below.

F. The Covered Period

The Consent Order settles all matters relating to Enron's compliance with the federal petroleum regulations during the period from January 1, 1973 through January 27, 1981. Consent Order at ¶ I. In the PD&O, we proposed that claims be made for refined products purchased from January 1, 1973 through the relevant date of decontrol for the product claimed. However, we have determined that price controls on Enron's sales of petroleum products would have begun on June 13, 1973, the effective date of the Cost of Living Council Freeze Regulations, 38 FR 15768 (June 15, 1973). Accordingly, no claim can be made for purchases of Enron products made prior to June 13, 1973. We will eliminate Enron's sales made prior to June 13, 1973 from our calculations of the volumetric refund amount.

IV. Refund Procedures

A. Distribution of the Enron Crude Oil Funds

The Enron crude oil monies, $4,800,000, plus interest, will be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges (MSRP), 51 FR 27899 (August 4, 1986). The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).[3] Up to 20 per cent of those funds, $960,000, will be distributed to injured parties in the DOE's subpart V crude oil refund proceeding. Refunds to eligible claimants in that proceeding will be based on a per-gallon refund amount derived by dividing the sum of all crude oil overcharge monies in escrow by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[4] The principal volumetric refund amount associated with the Enron crude oil funds in $0.000002375 per gallon. We have established a filing deadline of June 30, 1992 for filing an Application for Refund from the crude oil funds. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991).[5] Any party that has previously submitted an Application for Refund in the crude oil refund proceedings need not file another Application.

Under the terms of the MSRP, 80 percent of the Enron crude oil funds, $3,840,000, plus interest, as well as any portion of the above-mentioned 20 per cent reserve which is not distributed, will be divided equally between the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. *E.g., id.* at 88,116.

B. Eligibility for Refunds From the Refined Products Funds

To the extent that it is possible, the settlement amount of $43,200,000, plus accrued interest, will be distributed to purchasers of covered Enron NGLs, NGLPs and other covered refined products who can show that they were injured by Enron's pricing practices during the period June 13, 1973 through January 27, 1981 (the refund period).[6]

C. Calculation of Refund Amount

We are adopting a volumetric method to apportion the Enron escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the refund period times a per-gallon refund amount. We will derive the volumetric figure (per-gallon refund amount) by dividing the $43,200,000 received from Enron for refined product violations by the total volume of covered products sold by the firm during the regulatory period. This yields a volumetric refund amount of $.00601 per gallon, exclusive of interest.[7] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by Enron during the regulatory period. *E.g., American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,293 (1886) (*API*).[8]

Under the volumetric approach, a successful claimant is eligible to receive a refund equal to the number of gallons of covered products that it purchased from the covered Enron entitles during the period June 13, 1973 through the appropriate date of decontrol of each product, multiplied by the per-gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Enron funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

1. Showing of Injury

Each claimant will be required to document its purchases of Enron's covered products during the refund period. In addition, we will require an applicant to demonstrate that it was injured by the alleged overcharges. In

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[3] Shortly after issuance of the MSRP, the OHA announced its intention to apply the MSRP in all subpart V proceedings involving alleged crude oil violations and solicited comments concerning the refund procedures. 51 FR 29689 (August 20, 1986). On April 10, 1987, the OHA issued a Notice analyzing the comments and setting forth final procedures regarding applications for crude oil refunds. 52 FR 11737 (April 10, 1987).

[4] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868 n. 4. (1986).

[5] It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992, at the rate of $.0008 per gallon. However, while we anticipate that applicants that filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *E.g., Hebrew Rehabilitation Center for the Aged*, 21 DOE ¶ 85,148 (1991).

[6] Applicants are only eligible to receive refunds based upon covered products purchased from the beginning of the refund period until the last date that the particular product claimed was subject to price controls. Therefore, an applicant will not be eligible to receive a refund based upon butane and natural gasoline purchased after December 31, 1979, or ethane purchased after March 31, 1974, because these products were decontrolled after those dates. *E.g., Gulf Oil Corp./E.I. du Pont de Nemours*, 14 DOE ¶ 85,027 (1986).

[7] To compute this figure, we estimated that Enron sold a total of 7,186,265,624 gallons of covered products during the period from June 13, 1973 through January 27, 1981.

[8] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with Enron's alleged overcharges, a claimant will have to show that it maintained banks of unrecovered product costs. We are willing to accept information establishing with reasonable likelihood that a claimant had banks. *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985); see also *Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985). In order to demonstrate injury, a claimant must also show that market conditions would not permit it to pass through those increased costs to its customers. *E.g., API* at 88,295.

2. Small Claims Presumption

We are also adopting a presumption that resellers, retailers and refiners seeking volumetric refunds of $10,000 or less were injured by Enron's pricing practices. *E.g., Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Under the small claims presumption, an applicant seeking a total refund of $10,000 or less will not be required to make a detailed demonstration of injury. Such an applicant need only document its purchase volume of Enron covered products.

3. Mid-Range Presumption

In lieu of making a detailed showing of injury, a reseller, retailer or refiner claimant whose allocable share of the Consent Order funds for purchases of Enron's refined products exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 60 percent of its allocable share up to $50,000. Accordingly, a claimant in this group will only be required to provide documentation of its purchase volumes of Enron's covered products in order to be eligible to receive a refund of 60 percent of its allocable share up to $50,000. *E.g., Sauvage*, 17 DOE ¶ 85,304.

4. End-Users

We are adopting the presumption that end-users, *i.e.*, ultimate consumers, whose businesses are unrelated to the petroleum industry, were injured by Enron's alleged overcharges. *Marion Corp.*, 12 DOE ¶ 85,014 (1984); *see also Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). Therefore, end-users of Enron covered products need only document their purchase volumes to make a sufficient showing of injury and receive their full allocable shares.

5. Regulated Firms and Cooperatives

Claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, a need only submit documentation of purchase volumes used by them or, in the case of cooperatives, sold to their members in order to receive a full volumetric refund. However, regulated firms or cooperatives will be required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); see also *Office of Special Council*, 9 DOE ¶ 82,538 at 85,203 (1982). We will not require a public utility seeking a refund of $10,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

6. Indirect Purchasers

Firms that made indirect purchases of covered Enron products during the refund period may also apply for refunds. If an applicant did not purchase directly from Enron, but believes that covered products it purchased from another firm were originally purchased from Enron, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of covered Enron products passed through Enron's alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

7. Spot Purchasers

We are adopting the rebuttable presumption that a claimant who made only spot purchases from Enron was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered Enron products. Accordingly, in order to receive a refund, a spot purchaser claimant must rebut the spot purchaser presumption by submitting specific and detailed evidence to establish the extent to which it was injured as a result of its spot purchases from Enron. *E.g., Sauvage*, 17 DOE ¶ 85,304.

8. Applicants Seeking Refunds Based on Allocation Claims

We also recognize that, while the Consent Order makes no mention of known allocation violations, we may receive claims alleging Enron's failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR part 211. Such claims could be based on the Consent Order's broad language regarding the matters settled. See section III.B. above. Any such application will be evaluated with reference to the standards set forth in subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), the refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988), *Marathon Petroleum Corp./Research Fuels, Inc.*, 17 DOE ¶ 85,575 (1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the Consent Order firm and the likelihood that the Consent Order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the Agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Enron may have had to the alleged allocation violation. *E.g., id.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Enron. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of Enron allocation violations in general and regarding the specific allocation violation alleged by the claimants. Finally, since the Enron Consent Order reflects a negotiated compromise of the issues involved in an enforcement proceeding against Enron, as well as potential unknown violations, and the Consent Order amount is therefore less than Enron's potential liability, we will pro rate any allocation refunds that would otherwise be disproportionately large in relation to the Consent Order fund. *Cf. Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

V. General Refund Application Requirements for the Refined Products Pool

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased controlled refined petroleum products sold by Enron during the period between June 13, 1973, until the product claimed was decontrolled. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the Consent Order firm, Enron Corp., the case number (KEF-0116) and the applicant's name should be prominently displayed on the first page.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the covered Enron refined product(s) by the applicant, *i.e.*, reseller, retailer, refiner, end-user, public utility or cooperative.

(4) Monthly schedules of the applicant's purchases of each type of refined petroleum product that it purchased from UPG, Inc. and Northern Propane Gas Company from June 13, 1973, or from Florida Hydrocarbons Company from September 1, 1979, until the product was decontrolled must be submitted. The applicant should indicate the name of its supplier and the delivery location. The applicant should indicate the name of its supplier and the delivery location. The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by a covered Enron entity.

(6) If the applicant is a reseller, retailer or refiner whose volumetric share exceeds $10,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by a covered Enron entity's pricing practices. See section IV.C.1.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the Enron proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) A statement whether the applicant was in any way affiliated with Enron. If so, the applicant should explain the nature of the affiliation.

(9) A statement whether there has been any change in ownership of the entity that purchased the covered Enron products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(10) A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. See 10 CFR 205.9(d).

(11) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001.

All Applications for Refund must be filed in duplicate and must be filed no later than April 30, 1992. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: Enron Corp., Refund Proceeding, Case No. KEF-0116, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

VI. Distribution of Refunds Remaining After Consideration of All Refined Product Refund Applications

In the event that money remains after after all meritorious refund Applications have been processed, the funds in the Enron refined products escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1991).

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Enron Corp. pursuant to the Consent Order finalized on July 27, 1988, may now be filed.

(2) Applications for Refund from the Enron Corp. refined product pool must be postmarked no later than April 30, 1992.

(3) Applications for refund from the Enron Corp. crude oil pool must be postmarked no later than June 30, 1992 and filed pursuant to the procedures established in *Petrol Products, Inc.*, 20 DOE ¶ 85,436 (1990).

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $4,800,000, plus accrued interest, from the Enron Corp. subaccount, Account Number 730V00221Z, pursuant to Paragraphs (5), (6), and (7) of this Decision.

(5) The Director of Special Accounts and Payroll shall transfer $1,920,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(6) The Director of Special Accounts and Payroll shall transfer $1,920,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer $960,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: July 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-17478 Filed 7-22-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3977-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Discharge Monitoring Report ICR #0229.06).

Abstract: Information collection for the Discharge Monitoring Report is related to the monitoring and reporting requirements of the National Pollutant Discharge Elimination System, which covers point source discharges of pollutants to surface waters. Section 402 of the Clean Water Act authorizes the issuing of NPDES permits in order to ensure compliance with the Act's pollution control provisions, including Best Available Treatment Economically Achievable (BAT) guidelines, water quality standards, and pretreatment requirements.

All point source dischargers of waters into U.S. waters must have an NPDES permit specifying effluent limitations. Conditions on the NPDES permits require sampling, analysis, and reporting to the permit authority, which can be an EPA Region or one of the 39 delegated States. Permit limits and requirements vary considerably based on differences in categories of facilities, the nature and size of discharges, and the receiving waters. Furthermore, some States have requirements stemming from their own regulations, and delegated States administering NPDES programs have some flexibility in setting monitoring and reporting requirements beyond those imposed by EPA.

Nonetheless, all permits include requirements involving pollutant parameters to be sampled and analyzed, sampling and analysis frequency, sampling location, and reporting frequency. In spite of the variation in monitoring and reporting requirements between permittees, EPA requires permittees to submit most of their data in a standardized format so as to facilitate review. Permittees generally use the Discharge Monitoring Report (DMR) form. Permittees may use supplemental forms where their permitting authority requires monitoring other than effluent monitoring.

EPA Regions and the delegated States use the information submitted in the DMRs in order to set appropriate permit limits and conditions and then to evaluate permittees' compliance with their permit limits.

EPA may also use DMR data as a basis for developing future effluent guidelines. In addition, permit authorities may use the data for revising permit requirements or for conducting compliance activities. Furthermore, citizens' groups may make use of DMR data to monitor compliance of dischargers.

The total burden of the DMR collection is 16,080,000 hours, which is roughly a 1.5 million hour increase over the previously approved total. This primarily reflects the inclusion of storm water monitoring in this package and an increase in monitoring for toxic pollutants. The total cost of this collection to respondents is $247,446,845.

Burden Statement: The average burden imposed by the Discharge Monitoring Report is 15.96 hours per response. This figure includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: All facilities discharging wastewater.

Estimated No. of respondents: 170,721.

Estimated total annual burden on respondents: 16,080,000 hours.

Frequency of collection: Monthly, quarterly, semi-annually, annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 17, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-17467 Filed 7-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3977-2]

An Invitation for Preproposals for the Environmental Education and Training Program: Correction Notice

The notice about the Invitation for Preproposals for the Environmental Education and Training Program (published July 2, 1991 at (56 FR 30444) neglected to include the names and addresses of the EPA Regional Environmental Education Coordinators at the end of the notice. They are:

Region 1—Cleo Pizana, JFK Federal Building, Boston, MA 02203, (617) 565-3115

Region 2—Terry Ippolito, 26 Federal Plaza, New York, NY 10278, (212) 264-2980

Region 3—Bonnie Smith, 841 Chestnut Street, 3C100, Philadelphia, PA 19107, (215) 597-9800

Region 4—Alice Crosby, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347-4727

Region 5—Margaret McCue, 230 South Dearborn Street, Chicago, IL 60604, (312) 353-2000

Region 6—Sandy Sevier, 1445 Ross Avenue, Dallas, TX 75202, (214) 655-6444

Region 7—Rowena Michaels, 726 Minnesota Avenue Kandas City, KS 66101, (913) 551-7003

Region 8—Cece Forget, One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202-2405

Region 9—Virginia Donahue, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1305

Region 10—Mary Neilson, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-1200.

Specific questions about the Education and Training Program can be directed to: Mr. George Walker (A107), Office of Environmental Education, Environmental Protection Agency, 401 M Street, Washington, DC SW., 20460, (202) 382-4484.

Michael O'Reilly,

Acting Director.

[FR Doc. 91-17466 Filed 7-22-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140151; FRL-3933-9]

Access to Confidential Business Information by Computer Resource Management, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Computer Resource Management, Inc. (CRM), of Herndon, Virginia, for access to information which has been submitted to EPA under section 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than August 2, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-01-0026, contractor

Computer Resource Management, Inc. (CRM), of 950 Herndon Parkway, suite 360, Herndon, VA 22070–5500, will assist the Office of Toxic Substances (OTS) in performing quality control of data reported under the 1990 update of the Toxic Substances Control Act (TSCA) Inventory.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–01–0026, CRM will require access to CBI submitted to EPA under section 8 of TSCA to perform successfully the duties specified under the contract. CRM personnel will be given access to information submitted to EPA under section 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section 8 of TSCA that EPA may provide CRM access to these CBI materials on a need–to–know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at CRM's facility.

CRM has been authorized access to TSCA CBI at its facility at 2110–C Gallows Rd., Vienna, Virginia, under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved CRM's security plan and has performed the required inspection of its facility and has found the facility to be in compliance with the manual. Upon completing review of the CBI materials, CRM will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract may continue until December 31, 1991.

CRM personnel will be required to sign non–disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 15, 1991.

George A. Bonina,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–17468 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Lykes/ICL Discussions and Cooperative; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of such agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011324–003.

Title: Transpacific Space Utilization Agreement.

Parties: TWRA Conference Parties.

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Independent Carrier Parties

Evergreen Marine Corporation
Hyundai Merchant Marine Co., Ltd.
Orient Overseas Container Line
Hanjin Shipping Co., Ltd.
Transportacion Maritima Mexicana, S.A. (Mexican Line)

Synopsis: The proposed amendment would add Yang Ming Lines as an independent carrier party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011338.

Title: Lykes/ICL Discussion and Cooperative Working Agreement.

Parties:

Independent Container Line, Ltd.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement would authorize the parties to meet, discuss, exchange information and reach consensus on matters in the trade between U.S. Atlantic and Gulf Coast ports and points and Northern Europe and the Mediterranean. Adherence to any agreement reached by the parties is voluntary.

Dated: July 17, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–17395 Filed 7–22–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Country Bancorporation, 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 August 12, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Country Bancorporation, Crawfordsville, Iowa; formerly named Walker Bancshares Corporation, to acquire 100 percent of the voting shares of Peoples Trust and Savings Bank, Riverside, Iowa; Crawfordsville Insurance Agency, Inc., Crawfordsville, Iowa, and thereby indirectly acquire Peoples Savings Bank, Crawfordsville, Iowa; and Center Point Banshares Corp., Crawfordsville, Iowa, and thereby indirectly acquire Iowa State Bank and Trust Company, Center Point, Iowa.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Missouri Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of National Bank of the West, Colorado Springs, Colorado.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105

1. FNB Bancorp, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California.

Board of Governors of the Federal Reserve System, July 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17412 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

First Chicago 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 August 12, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago Corporation, Chicago, Illinois, and Gary-Wheaton Corporation, Wheaton, Illinois; to engage *de novo* through its subsidiary, G-W Life Insurance Company, Wheaton, Illinois, in reinsurance of credit life and credit disability insurance that is directly related to extensions of credit by all of the subsidiary banks of First Chicago Corporation.

Board of Governors of the Federal Reserve System, July 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17413 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

Todd M. Langenfeld, 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 August 12, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Todd M. Langenfeld, Earling, Iowa; to acquire an additional 13.42 percent of the voting shares of J. Carl H. Bancorporation, Earling, Iowa, as the result of a stock redemption for a total of 34.57 percent, and thereby indirectly acquire Farmers Trust and Savings Bank, Earling, Iowa.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Patricia A. Garney, Kansas City, Missouri; to acquire 26 percent, and Charles A. Garney, Kansas City, Missouri, to acquire 24 percent of the voting shares of NKC Bancshares, Inc., North Kansas City, Missouri, and thereby indirectly acquire Norbank, North Kansas City, Missouri.

Board of Governors of the Federal Reserve System, July 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17414 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

Stearns Financial Services, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 91-13920) published at page 27,020 of the issue for Wednesday, June 12, 1991.

Under the Federal Reserve Bank of Minneapolis, the entry for Stearns Financial Services, Inc. is amended to read as follows:

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Stearns Financial Services, Inc., Albany, Minnesota; to acquire 89.6 percent of the voting shares of National Bank of Canby, Canby, Minnesota. In connection with this application, Applicant also proposes to engage in general insurance agency activities in a place that has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Comments on this application must be received byAugust 6, 1991.

Board of Governors of the Federal Reserve System, July 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17405 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket No. 9227]

Kinney Drugs, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a pharmaceutical firm from organizing or

entering into any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party payer prescription drug plan; for ten years, from stating or communicating to any pharmacy firm the intent to enter into or refuse to enter into any third-party payer prescription drug plan; and for eight years, from providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party payer prescription drug plan.

DATES: Complaint issued April 19, 1989. Order issued July 1, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S-3308, Washington, DC 20580. (202) 326-2912.

SUPPLEMENTARY INFORMATION: On Tuesday, March 26, 1991, there was published in the **Federal Register**, 56 FR 12534, a proposed consent agreement with analysis In the Matter of Chain Pharmacy Association of New York State, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-17447 Filed 7-22-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9227]

James E. Krahulec; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Mr. Krahulec from organizing or entering into any agreement with any pharmacy firms to boycott, withdraw from or refuse to enter into a third-party payer prescription drug plan; for ten years, from organizing, sponsoring, or attending a meeting of pharmacy firms at which persons make any statements concerning the pharmacy firm's intent to enter into or refuse to enter into any third-party payer prescription drug plan; for ten years, from communicating to any pharmacy firm, other than Mr. Krahulec's employer, any information concerning any pharmacy firm's intention to enter into or refuse to enter into any third-party payer prescription drug plan; and for eight years, from providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party payer prescription drug plan.

DATES: Complaint issued April 19, 1989. Order issued July 1, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S-3308, Washington, DC 20580. (202) 326-2912.

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No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-17448 Filed 7-22-91; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D-227]

Public Buildings and Space

July 11, 1991.

To: Heads of Federal agencies.

Subject: Incentives to Federal employees' use of public transportation.

1. *Purpose.* This bulletin provides guidance to agencies and departments on the provisions of Public Law 101-509, title IV—General Provisions, section 629, 104 Stat. 1478 (1990) regarding participation by Federal agencies in State or local government programs designed to encourage the use of public transportation by providing reduced cost incentives to employees.

2. *Effective date:* July 23, 1991.

3. *Expiration date.* This bulletin expires on December 31, 1993.

4. *Authority.* This guidance is issued pursuant to GSA's authority under Executive Order 12191, Federal Facility Ridesharing Program, February 1, 1980, and Federal Property Management Regulation 101-6.3, Ridesharing, 41 CFR 101-6.3.

5. *Background.* (a) As a general rule, the Federal Government cannot subsidize an employee's cost of commuting to or from work. Section 629(a), title IV-General Provisions, of Public Law 101-509 constitutes a specific statutory exception to this general rule by providing that Federal agencies "may participate in any program established by a State or local government that encourages employees to use public transportation. Such programs may involve the sale of discounted transit passes or other incentives that reduce the cost to the employee of using public transportation." The provisions of section 629 are repealed effective December 31, 1993.

(b) Section 629(d) states that: "No later than June 30, 1993, the General Accounting Office shall conduct a study and submit a report on the implementation of programs under subsection (a) and the employees (including information of the employing agencies and rates of pay of such employees) who have participated in such programs."

6. *Guidance.* (a) Public Law 101-509, title IV—General Provisions, Section 629, 104 Stat. 1478 (1990) is permissive in nature by allowing, but not mandating, Federal agencies' participation in State or local government programs

(including, for example, those sponsored by transit districts, authorities, etc., created by a State or local government) designed to encourage the use of public transportation. Participation may be as general as participating in State or local government sponsored events promoting the use of public transportation or as specific as providing reduced cost incentives to the employee.

(b) Participating Federal agencies which choose to offer reduced cost incentives to their employees may use appropriated funds, if otherwise available, to subsidize all or a portion of Federal employees' public transportation costs.

(c) Federal agencies which elect to participate in the program should develop and establish internal procedures to implement this law. At a minimum, data should be kept to reflect the number of passes, tokens, vouchers, etc., issued to employees, the grade level of participating employees, and the funds expended in the program.

(d) Procedures should be established to include safeguards that preclude any improprieties in the use of Federal funds and limit program participation to eligible Federal employees.

(e) Agencies implementing the provisions of this Bulletin should consult, as appropriate, with their respective labor organizations.

William C. Coleman,

Commissioner, Public Buildings Service.

[FR Doc. 91–17392 Filed 7–22–91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittees scheduled to meet during the months of July and August 1991:

Name: Secondary and Tertiary Prevention of Stroke Patient Outcome Research Team Advisory Subcommittee.

Date and Time: July 24, 1991, 10 a.m.

Place: Parklawn Building, room 18–15, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

* * * * *

Name: Congestive Heart Failure Patient Outcome Research Team Advisory Subcommittee.

Date and Time: July 25, 1991, 10 a.m.

Place: Parklawn Building, room 18–15, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

* * * * *

Name: Chronic Obstructive Pulmonary Disease Patient Outcome Research Team Advisory Subcommittee.

Date and Time: August 5, 1991, 10 a.m.

Place: Parklawn Building, room 18–15, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

Purpose: Each Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to specific Requests for Proposals. These contracts are designed to: (a) Identify and explain practice variations in the diagnosis, treatment, and management of specified clinical conditions and analyze these in terms of relative patient outcomes, resource use, and remaining scientific uncertainties; (b) develop recommendations regarding effective treatment and mangement of specified clinical conditions; (c) disseminate project findings and recommendations to practitioners and the public, in accordance with a scientific plan; and (d) evaluate the effectiveness of the dissemination in terms of measurable change in patient outcomes, practice patterns, public knowledge and attitudes, and/or resource use.

Agenda: The session of each Subcommittee will be devoted to the technical review and evaluation of contract proposals submitted in response to specific Requests for Proposals. The Administrator, AHCPR, has made a formal determination that these meetings will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidencial proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding these meetings should contact Ms. Lori Donovan, Contract Liaison, Agency for Health Care Policy and Research, room 18–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Note: Due to unforeseen circumstances, arrangements for the July 24 and July 25 meetings were delayed so that more timely notification was not possible.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–17419 Filed 7–22–91; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 91F–0198]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer in blends with polyethylene terephthalate in contact with foods.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4236) has been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2–5 Kasumigaseki 3-chome, Chiyoda-ku, Tokyo 100, Japan, proposing that the food additive regulations be amended to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer in blends with polyethylene terephthalate in contact with foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 15, 1991.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–17420 Filed 7–22–91; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Minneapolis District Office, chaired by Donald Aird, Jr., Public Affairs Specialist. The topics to be discussed are food labeling proposals: mandatory ingredient labeling, percent labeling for fruit and vegetable juice, and nutrition labeling for the top 20 fruits, vegetables, and seafoods.

DATES: Monday, July 29, 1991, 10 a.m. to 11:30 a.m.

ADDRESSES: Concordia College, IVERS South Science, rm. 386, Moorhead, MN 56560.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 17, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-17388 Filed 7-22-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-741-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday, August 1, and Friday, August 2, 1991, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in rooms 503A and 529A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Green (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related Deparment of Health and Human Services programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives of various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating and use of Federal programs. It is co-chaired by the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA).

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

The Committee will hold a public meeting on August 1 and 2, 1991. At this meeting, the Committee will discuss: The proposed revisions to the format and structure of volume 3 of ICD-9-CM beginning with the cardiovascular chapter; Hartmann procedure; removal of extrauterine pregnancy; hip replacement with previous removal of prothesis; postnecrotic cirrhosis, hepatitis B surface antigen negative; maxillofacial anomalies; candidal esophagitis and enteritis; diabetes mellitus with hyperosmolar coma; hyperostosis/hyperexostosis; addenda; and other topics.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: July 9, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-17438 Filed 7-22-91; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Workshop; Opportunities for Research on Women's Health

Notice is hereby given that the Task Force on Opportunities for Research on Women's Health, a subcommittee of the Advisory Committee to the Director, NIH, will convene a workshop on Opportunities for Research on Women's Health on September 4, 5, and 6, 1991, at Marriott's Hunt Valley Inn in Hunt Valley, Maryland. The workshop will be held in public session. On Wednesday, September 4, the workshop will begin at 8 a.m. and end at 4:30 p.m.; on Thursday, September 5, the workshop will begin at 8 a.m. and end at 5 p.m.; and on Friday, September 6, the workshop will begin at 8 a.m. and end at 12:30 p.m.

Approximately 120 invited experts in the fields of basic and clinical sciences, ethics, economics, and the law, with particular knowledge of issues related to women's health research, will be asked to propose a comprehensive biomedical research agenda for women's health for the coming decade and beyond. The workshop will assess the current status of research on women's health, identify scietific opportunities and gaps in research, and recommend approaches and options to take advantage of the most promising of these opportunities for research on women's health. Invited participants will address diseases, disorders, and conditions as they affect women in each of the stages of the life span and will also serve on cross-cutting science panels.

At the conclusion of their work, the Task Force and the workshop participants will provide a report and a series of recommendations to the Advisory Committee to the Director, NIH.

On June 12 and 13, in preparation for the September workshop, members of the Task Force heard testimony in a public meeting from individuals representing organizations with an interest in research issues related to women's health within the mandate of the National Institutes of Health. This testimony will be considered as the Task Force formulates the final agenda for the September workshop and will assist in determining priority areas. Specifics of the June 12-13 meeting were announced in the **Federal Register** (56 FR 12207) on March 22, 1991.

Comments and questions related to the proposed workshop should be addressed to Dr. Judith H. LaRosa, National Institutes of Health, Office of Research on Women's Health, Building 1, room 201, 9000 Rockville Pike,

Bethesda, Maryland 20892, (301) 402-1770.

Dated: July 12, 1991.

William F. Raub,

National Institutes of Health.

[FR Doc. 91-17461 Filed 7-22-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistance Secretary for Housing—Federal Housing Commissioner

[Docket No. D-91-954; FR-3077-D-01]

Redelegation of Authority

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

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice redelegates to Regional Administrators the Authority of the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to approve plans of action submitted by owners, pursuant to 24 CFR part 248, which implements the Emergency Low Income Housing Preservation Act, title II of the Housing and Community Development Act of 1987 (the "1987 Act") and the Low Income Housing Preservation and Resident Homeownership Act of 1990, title VI of the National Affordable Housing Act (the "1990 Act"). Regional Administrators may then, at their option, redelegate this authority to Field Office Managers or, in the case of combined regional and field offices, Regional Administrators may redelegate this authority to Regional Directors of Housing.

EFFECTIVE DATE: July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Chief, Affordable Housing Branch, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., room 6176, Washington, DC 20410, (202) 708-2300.

SUPPLEMENTARY INFORMATION: The 1987 Act and the 1990 Act require owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to submit a plan of action providing for such prepayment, termination, extension, or transfer. Section 225 of the 1987 Act and sections 218, 222 and 226 of the 1990 Act provide the Secretary with the authority to approve plans of action subject to the criteria set forth therein. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action, however, does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action.

Under a delegation of authority published in the **Federal Register** at 54 FR 22033 on May 22, 1989, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner "the authority of the Secretary of Housing and Urban Development with respect to the multifamily programs and functions," including but not limited to the implementation of title II of the National Housing Act. This delegation of authority encompasses the authority to approve plans of action pursuant to the 1987 Act and the 1990 Act.

Under this redelegation, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner hereby redelegate the authority, as set forth in title II of the 1987 Act and title VI of the 1990 Act, to approve plans of action, submitted by owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to Regional Administrators. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action, however, does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action. Regional Administrators may then, at their option, redelegate this authority to Field Office Managers or, in the case of combined regional and field offices, Regional Administrators may redelegate this authority to Regional Directors of Housing.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 USC 3535(d)).

Dated: July 16, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-17473 Filed 7-22-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F-21905-27]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e) and 1621(j), will be issued to Doyon, Limited for approximately 5,720 acres. The lands involved are in the vicinity of Forty-Mile National Wild and Scenic River Corridor, Alaska.

Fairbanks Meridian, Alaska

T. 4 S., R. 32 E. (Unsurveyed)

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 22, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Barbara S. Knudsen,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-17415 Filed 7-22-91; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

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 (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone 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 (1010–0044); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Application for Permit to Drill, Form MMS–331C.

OMB approval number: 1010–0044.

Abstract: Respondents submit Form MMS–331C to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of Operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS–331C.

Frequency: On occasion.

Description of respondents: OCS oil, gas, and sulphur lessees.

Estimated completion time: .5 hour.

Annual responses: 1,130.

Annual burden hours: 565.

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1239.

Dated: June 18, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–17393 Filed 7–22–91; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer, code D–7920, U.S. Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone 303–236–6769; and the Office of Management and Budget, Paperwork Reduction Project (1006–0005), Washington, DC 20503, telephone 202–395–7340.

Title: Acreage Limitation—Bureau of Reclamation Rules and Regulation, 43 CFR part 429.

OMB approval number: 1006–0005.

Abstract: The proposed information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of Reclamation law. The forms establish each landholder's status with respect to landownership limitation, full cost pricing thresholds, lease requirements, and other provision of Reclamation law.

Bureau Form Numbers: 7–2179 through 7–2181, 7–2183 and 7–2184; 7–2180EZ; 7–2187 through 7–2189; 7–2178; 7–2190 and 7–2191; 7–2190EZ; 7–2193 and 7–2194; 7–2197 through 7–2199.

Frequency: Annually, and when landholding changes occur.

Description of Respondents: Owners and lessees of land on Federal Reclamation projects.

Estimated Completion Time: 0.31 hour.

Annual Responses: 42,920.

Annual Burden Hours: 13,305.

Bureau Clearance Officer: Robert A. López, 303–236–6769.

Dated: July 2, 1991.

Murlin Coffey,

Chief, Supply and Services Division, Bureau of Reclamation.

[FR Doc. 91–17409 Filed 7–22–91; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto.

The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the council expire on Thursday, November 14, 1991. The groups or fields represented are as follows: Employee organizations (multiemployer), actuarial counseling, investment counseling, employers, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit plans to represent any of the groups or fields specified in the preceding paragraph, may submit

recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perkin Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N-5677, Washington, DC 20210.

Recommendations must be delivered or mailed on or before September 12, 1991. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidate's political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 18th day of July 1991.

David George Ball,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 91-17455 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

[TA-W-25,699]

Barclay Sportswear, Inc, Waterville, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 1991 in response to a worker petition which was filed on behalf of workers at Barclay Sportswear, Inc, Waterville, New York.

An active certification covering the petitioning group of workers remains in effect (TA-W-25,610). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-17453 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,011]

Russell-Newman, Inc. Seymour, TX, TA-W-25,011A Engineering Dept. Russell-Newman, Denton, TX, and TA-W-25,011B Engineering Dept. Russell-Newman, Cisco, TX; 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 December 28, 1990, applicable to all workers of Russell-Newman, Inc., Seymour, Texas. The notice was published in the **Federal Register** on January 17, 1991 (56 FR 1825).

At the request of the State Agency the Department reviewed the subject certification. The company provided new information showing that the Production Engineering Departments at Denton and Cisco, Texas were closed because of reduced demand for their services from the Seymour plant. Both Engineering Departments substantially supported the Seymour plant. The amended notice applicable to TA-W-25,011 is hereby issued as follows:

"All workers of Russell-Newman, Inc., Seymour, Texas and all workers of Russell-Newman's Engineering Departments in Denton, Texas and Cisco, Texas who became totally or partially separated from employment on or after October 18, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 12th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-17450 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Adronics/Elrob Mfg. Corp. (Wkrs)	Cedar Grove, NJ	07/08/91	06/19/91	26,017	Radio, TV's, Auto Antennas, Etc.
AFG Industries, Inc. ABGWI	Cinnaminson, NJ	07/08/91	06/24/91	26,018	Flat Glass.
Barclay Sportswear (Wkrs)	Booneville, NY	07/08/91	06/25/91	26,019	Knit Sweaters.
Beach-Nut Nutrition Corp. BCTWU	Canajoharie, NY	07/08/91	06/20/91	26,020	Baby Food and Cereal.
Beech-Nut Nutrition Corp. BCTWU	Fort Plain, NY	07/08/91	06/20/91	26,021	Baby Food and Cereal.
Bentley Coal Co. (Wkrs)	Coalton, WV	07/08/91	06/28/91	26,022	Coal.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bergen Cable Technologies, Inc. (Wkrs)	Lodi, NJ	07/08/91	06/19/91	26,023	Cable Assemblies.
Capri Coat Corp. ILGWU	Clifton, NJ	07/08/91	06/24/91	26,024	Ladies Coats.
Columbia River Log Scaling (Wkrs)	Eugene, OR	07/08/91	06/11/91	26,025	Log Scaling and Grading.
Crisa Corp (Wkrs)	Laredo, TX	07/08/91	06/24/91	26,026	Glassware.
Dallas Showroom (CO)	Dallas, Tx	07/08/91	06/23/91	26,027	Ladies' Sportswear.
Electroloy Co. (CO)	Hatfield, PA	07/08/91	06/24/91	26,028	Spot Welding Tips.
Esselte Letraset Mfg. Corp. (Wkrs)	Moonachie, NJ	07/08/91	06/07/91	26,029	Art Supplies.
Esselte Pendaflex Corp. (OEIU)	Parsippany, NJ	07/08/91	06/17/91	26,030	Art Supplies.
Federal Sportswear ILGWU	Federalsburg, MD	07/08/91	06/24/91	26,031	Ladies Sportswear.
Formitex, Inc. (IUE)	Columbus, OH	07/08/91	06/27/91	26,032	Wall Units.
Hansley Industries, Inc. (Wkrs)	New York, NY	07/03/91	05/17/91	26,033	Sportswear.
Heritage Resources, Inc. (Wkrs)	Dallas, TX	07/08/91	06/12/91	26,034	Oil and Gas.
J&M Cut & Sew, Inc. ACTWU	Gratz, PA	07/08/91	06/26/91	26,035	Ladies Sportswear.
Jen/Chris (Wkrs)	New York, NY	07/08/91	06/24/91	26,036	Ladies Dresses.
Leisure Wear Incl (Wkrs)	Frankford, MO	07/08/91	06/21/91	26,037	Jogging Pants.
Leisure Wear Inc. (Wkrs)	Vandalia, MA	07/08/91	06/21/91	26,038	Jogging Pants.
Natale Cutting Services, Inc. ILGWU	Bloomfield, NJ	07/08/91	06/21/91	26,039	Sportswear.
Nationwide Data Systems, Inc. (Wkrs)	Wilkes-Barre, PA	07/08/91	06/24/91	26,040	Data Entry.
Nerco Oil & Gas, Inc. (Wkrs)	Vancouver, WA	07/08/91	06/24/91	26,041	Oil and Gas.
Output Technology Corp. (Wkrs)	Spokane, WA	07/08/91	06/10/91	26,042	Computer Printers.
Prophency Corporation (Wkrs)	Dallas, TX	07/08/91	06/23/91	26,043	Ladies' Sportswear.
R.J.M.J., Inc. (Wkrs)	New York, NY	07/08/91	06/14/91	26,044	Sportswear.
Rhone-Poulene, Inc. (ICWU)	St. Louis, MO	07/08/91	10/15/90	26,045	Salicylic Acid.
Ringier America, Inc. (Wkrs)	Olathe, KS	07/08/91	06/21/91	26,046	Books.
Russel Drilling Co. (Wkrs)	Harvey, ND	07/08/91	06/24/91	26,047	Oil and Gas.
Signal Apparel Co., Inc. ILGWU	Chattanooga, TN	07/08/91	06/23/91	26,048	Knitwear.
Sunbeam/Oster Housewares Co. (Wkrs)	Milwaukee, WI	07/08/91	06/06/91	26,049	Kitchen Appliance.
Timesavers, Inc. (Wkrs)	Minneapolis, MN	07/08/91	06/20/91	26,0501	Belt Sanders.
Tri-State Retail Systems, Inc. (Wkrs)	Rochester, NY	07/08/91	06/18/91	26,051	Sale Business Systems.
Tri-State Retail Systems, Inc. (Wkrs)	Amherst, NY	07/08/91	06/18/91	26,052	Sale Business Systems.
Tri-State Retail Systems, Inc. (Wkrs)	Troy, NY	07/08/91	06/18/91	26,053	Sale Business Ssytems.
Walter Cutting, Inc. ILGWU	Newark, NJ	07/08/91	06/24/91	26,054	Childrens' Dresses.
Waterbury Companies, Inc. (Wkrs)	Biddeford, ME	07/08/91	06/20/91	26,055	Plastic Parts for Electrical Appliances.
Westinghouse Electric Corp. (Wkrs)	Pittsburgh, PA	07/08/91	06/20/91	26,056	Process Controls for Factories.

[FR Doc. 91-17450 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,485]

Wolf Bros. New York, NY; Negative Determination Regarding Application for Reconsideration

By applications dated May 28 and May 31, 1991, Local 174 and a petitioner requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 24, 1991 and published in the **Federal Register** on May 10, 1991 (56 FR 21689).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produced persian lamb coats and jackets.

The union claims that employment in the fur industry has declined since 1950 and that the annual income for fur workers has also declined. Its also claimed that the Department's customer survey should have considered competing import purchases during the relevant period.

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. The "contributed importantly" test is generally demonstrated through a survey of the firm's declining customers. The Department's survey of the major declining customers of the subject firm revealed that they did not import persian lamb coats and jackets during the relevant periods.

The survey's customer comments indicated that the fur coat and jacket market is characterized more by aesthetics, style and popularity and that lamb coats and jackets are not at the same end of the scale as sable, mink and fox coats and jackets.

Further, the Department sees no useful purpose in using 1950 as a benchmark for determining whether the Group Eligibility Requirements of the Trade Act are met. Section 223(b)(1) of the Act does not permit the certification of a worker whose separation occurred more than one year prior to the date of the petition. Therefore, the Department looks for declines in employment, sales or production and increases in imports in the period applicable to the petition—in this case 1990 compared to the immediately preceding year. Also, a decline in income is not a worker group requirement for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-17452 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activites under that attestation, shall be filed with a local office of the Wage an Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **"ADDRESSES"** section of this notice.

Signed at Washington, DC, this 15th day of July 1991.

Robert A. Schaerfl,

Director, United States Employment Service

Division of Foreign Labor Certifications Approved Attestations

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Mr. Jim E. Bushmiaer, Stuttgart Memorial Hospital, Route 1, Stuttgart, AR 72160, 501–673–3511.	AR	06/07/91
Ms. Mary Harmann Harrison, Saint Luke's Medical Center, 1800 E. Van Buren, Phoenix, AZ 85006, 602–251–8400.	AZ	06/20/91
Ms. Sharon Y. Bailey, Bailey's Specialty Nurses, Inc., 1600 Florida Ave. STE 220, Hemet, CA 92344, 714–652–1950.	CA	06/07/91
Mr. Charles E. Kraus, San Bernardino Community Hosp, 1805 Medical Center Drive, San Bernardino, CA 92411, 714–887–6333.	CA	06/07/91
Mr. William L. Summers, Patton State Hospital, 3102 E. Highland Avenue, Patton, CA 92369, 714–862–8121.	CA	06/13/91
Ms. Sheila G. Manderson, Kaiser Fnd. Hosp.—Richmond, 1330 Cutting Blvd., Richmond, CA 94804, 415–231–4600.	CA	06/13/91
Mr. Herbert G. Needman, Temple Community Hospital, 235 North Hoover Street, Los Angeles, CA 90004, 213–382–7252.	CA	06/13/91
Frank Nachtman, Marshall Hospital, Marshall Way, Placerville CA 95667, 916–622–1441.	CA	06/20/91
Mr. David S. Wanger, Sierra View District Hospital, 465 W. Putnam Ave., Porterville, CA 93257, 209–784–1110.	CA	06/20/91
Sister E. Joseph Keaveney, St. Francis Medical Ctr., 3630 E. Imperial Highway, Lynwood, CA 90262, 213–603–6085.	CA	06/20/91
Mr. Suwaran Brar, White Cap Nursing Agency, Inc., 2500 Marconi Avenue, Sacramento, CA 95821, 916–484–0144.	CA	06/26/91
Mr. James L. Ash, Santa Barbara Cottage Hosp., Pueblo at Bath Streets, Santa Barbara, CA 93102, 805–682–7111.	CA	06/26/91
Mr. Frederico P. Garcia, Jr., Int'l Nursing Home Care, Ser., 10717 Camino Ruiz, Suite 219, San Diego, CA 92126, 619–695–8774.	CA	06/26/91
Mr. David Hiatt, Brier Oak Terrace Care Ctr., 5154 Sunset Blvd., Los Angeles, CA 90027, 213–663–3951.	CA	06/26/91
Mr. Govind S. Karki, Millbrae Nursing Home, Inc., 33 Mateo Avenue, Millbrae, CA 94030, 415–583–8937.	CA	06/26/91
Mr. Bernard J. Herman, Mercy Hospital, Bakersfield, P.O. Box 119, Bakersfield, CA 93302, 805–328–5580.	CA	06/28/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Mr. Thomas Fitz, Palms of Pasadena Hospital, 1501 Pasadena Avenue South, St. Petersburg, FL 33707, 813-381-1000.	FL	06/06/91
Mr. Paul E. Metts, Shands Teaching Hosp. & Clinic, Box J-303, JHMHC, Gainesville, FL 32610, 904-395-0321.	FL	06/13/91
Mr. R. Anderson Roberts, United States Med. Staffing C, 1500 N.W. 49th Street, Ft. Lauderdale, FL 33309, 305-772-9722.	FL	06/20/91
Mr. Victor J. Maya, Kendall Regional Medical Cent, 11750 Bird Road, Miami, FL 33175, 305-223-3000.	FL	06/20/91
Mr. Brent Marstellar, Sun Coast Hospital, 2025 Indian Rocks Road, Largo, FL 34644, 813-586-7106.	FL	06/20/91
Mr. Barry Gold, JFK Medical Center, 5301 S. Congress Ave., Lake Worth, FL 33460, 407-642-3729.	FL	06/20/91
Ms. JoAnn Batcheller, Miami Heart Institute, 4701 Meridian Avenue, Miami Beach, FL 33140, 305-674-3060.	FL	06/20/91
Mr. Edward A. Dauer, Florida Medical Center Hospit, 5000 W. Oakland Park Blvd., Fort Lauderdale, FL 33313, 305-735-6000.	FL	06/26/91
Mr. Duncan Moore, Tallahassee Memorial Reg'l Me, Magnolia Dr. & Miccosukee Rd., Tallahassee, FL 32308, 904-681-5250.	FL	06/26/91
Mr. Frank V. Sacco, Memorial Hospital, 3501 Johnson Street, Hollywood, FL 33021, 305-987-2000.	FL	06/26/91
Ms. Lorna Mamelson, Health Quest/Regents Park, 6363 Verde Trail, Boca Raton, FL 33433, 407-483-9282.	FL	06/26/91
Mr. Joseph G. Brum, Henry General Hospital, 1133 Hudson Bridge Road, Stockbridge, GA 30281, 404-389-2286.	GA	06/20/91
Mr. Bernard L. Brown, Kennestone Reg'l Health Care, 677 Church Street, Marietta, GA 30060, 404-426-3161.	GA	06/24/91
Mr. Hulett Sumlin, Piedmont Hospital, 1968 Peachtree Rd. NW, Atlanta, GA 30309, 404-350-2222.	GA	06/26/91
Mr. William Dimas, Lee Manor Health Care Residen, 1301 Lee Street, Des Plaines, IL 60018, 708-827-9450.	IL	06/18/91
Mr. Sam Gorenstein, Metro. Nursing Ctr. of Elmwood, 7733 W. Grand Avenue, Elmwood Park, IL, 708-452-9200.	IL	06/20/91
Mr. Wendell P. Monyak, Bohemian Home for the Aged, 5061 North Pulaski Road, Chicago, IL 60630, 312-588-1220.	IL	06/20/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Mr. Morris Esformes, Kankakee Terrace, 100 Belle Aire, Bourbonnais, IL 60914, 815-939-0910.	IL	06/20/91
Mr. Harold Lederman, Windsor Manor Nursing and Reh, 10426 S. Roberts Road, Palos Hills, Illinois 60465, 708-598-3460.	IL	06/20/91
Mr. Ronald Spaeth, Highland Park Hospital, 718 Glenview Avenue, Highland Park, IL 60035, 708-480-3777.	IL	06/25/91
Ms. Myron P. Nidetz, North Central Dialysis Ctrs., 55 East Washington Street, Chicago, IL 60602, 312-332-6892.	IL	06/26/91
Mr. Morris Esformes, Bourbonnais Terrace, 133 Mohawk Drive, Bourbonnais, IL 60914, 815-937-4790.	IL	06/26/91
Mr. Robert Nataupsky, Woodstock Residence, Inc., 309 McHenry Avenue, Woodstock, IL 60098, 815-338-1700.	IL	06/26/91
Mr. Morris Esformes, The Terrace Nursing Home, Inc, 1615 Sunset Avenue, Waukegan, IL 60087, 708-244-6700.	IL	6/26/91
Mr. Morris Esformes, Joliet, Terrace, 2230 McDonough, Joliet, IL 60436, 815-729-3801.	IL	06/26/91
Mr. S. James Biltz, HCA Wesley Medical Center, 550 N. Hillside, Wichita, KS 67214, 316-688-2468.	KS	06/13/91
Mr. Robert M. Krieger, Humana Hospital—Suburban, 4001 Dutchman's Lane, Louisville, KY 40207, 502-893-1235.	KY	06/13/91
Mr. Abe Treshinsky, Eastwood Pines Nursing Home, Eastwood Circle, Gardner, MA 01440, 508-632-8776.	MA	06/20/91
Ms. Wendy LaBate, Melrose Care Center, 40 Martin St., Elrose, MA 02176, 617-665-7050.	MA	06/26/91
Mr. Maurice I. May, Hebrew Rehab. Ctr. for Aged, 1200 Centre Street, Roslindale, MA 02131, 617-325-8000.	MA	06/26/91
Mr. Ronald Marx, Leland Memorial Hospital, 4409 East/West Highway, Riverdale, MD 20737, 301-891-5652.	MD	06/13/91
Mr. James J. Xinis, Calvert Memorial Hospital, 100 Hospital Road, Prince Frederick, MD 20678, 301-535-8120.	MD	06/20/91
Mr. B. Stanley Cohen, Sinai Hosp. of Baltimore, Inc, 2401 Belvedere Ave., Baltimore, MD 21215, 301-578-5673.	MD	06/26/91
Mr. Patrick F. Mutch, Greater Laurel Beltsville Hos, Dimensions Health Corp., Laurel, MD 20707, 301-497-7905.	MD	06/26/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Mr. Ike Iwu, Nightingale's Inc., Franklin Business Center, Minneapolis, Minnesota 55404, 612-872-1156.	MN	06/20/91
Mr. Charles Lindstrom, Saint Luke's Hospital, 4400 Wornall Road, Kansas City, MO 64111, 816-932-3600.	MO	06/13/91
Mr. Morris Esformes, Creve Coeur Healthcare, Inc., 12705 Olive St. RD., Creve Coeur, MO 63141, 314-434-8361.	MO	06/20/91
Mr. Morris Esformes, Romona Villa Healthcare Ctr., 8575 N. Cosada Dr., Kansas City, MO 64154, 816-436-8575.	MO	06/20/91
Mr. Morris Esformes, Colonial Health Care, 894 Leland, University City, MO 63130, 314-726-4767.	MO	06/20/91
Mr. Morris Esformes, North Shore Conval. Ctr., 610 Prigge Road, St. Louis, MO 63138, 314-741-9393.	MO	06/20/91
Mr. Morris Esformes, Cedars Health Care, 6400 the Cedars Court, Cedar Hills, MO 63016, 314-285-1777.	MO	06/20/91
Mrs. Vickey Goc, Holmes Lake Manor, Mid America Care Centers, Inc., Lincoln, NE 68506, 402-489-7175.	NE	06/25/91
Mr. Jonathan M. Metsch, Greenville Hospital, 1825 Kennedy Boulevard, Jersey City, NJ 07305, 201-547-6100.	NJ	06/07/91
Mr. William B. Calvin, Eastern Pines Convalescent Ce, 29 N. Vermont Ave., Atlantic City, NJ 08401, 609-344-8900.	NJ	06/13/91
Mr. Warren E. Gager, William B. Kessler Mem. Hosp., 600 South White Horse Pike, Hammonton, NJ 08037, 609-561-6700.	NJ	06/13/91
Ms. Martha R. Zeitner, Cranford Hall Nursing Home, 600 Lincoln Pk E., Cranford, NJ 07016, 908-276-7100.	NJ	06/20/91
Mr. Joseph Sherber, Kimball Medical Center, 600 River Avenue, Lakewood, NJ 08701, 908-370-7405.	NJ	06/26/91
Mr. David F. Graham, Medford Conval. & Nur. Ctr., 185 Tuckerton Rd., Medford, NJ 08055, 609-983-8500.	NJ	06/26/91
Mr. Thomas Schember, St. Mary Hospital, Franciscan Health System of NJ, Inc., Hoboken, NJ 07030, 201-714-8900.	NJ	06/26/91
Ms. Lynn C. O'Connor, Buttonwood Hosp. of Burlington, County Route 530, New Lisbon, NJ 08064, 609-726-7000.	NJ	06/27/91
Ms. Tamara W. Moreland, Eastern Shore Nursing & Conva, 1419 Rt. 9 N., Cape May Court House, NJ 08210, 609-465-2260.	NJ	06/28/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Ms. Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln Pk E., Cranford, NJ 07016, 908-276-7100.	NJ	06/20/91
Mr. Joseph Sherber, Kimball Medical Center, 600 River Avenue, Lakewood, NJ 08701, 908-370-7405.	NJ	06/26/91
Mr. David F. Graham, Medford Conval. & Nur. Ctr., 185 Tuckerton Rd., Medford, NJ 08055, 609-983-8500.	NJ	06/26/91
Mr. Thomas Schember, St. Mary Hospital, Franciscan Health System of NJ, Inc., Hoboken, NJ 07030, 201-714-8900.	NJ	06/26/91
Ms. Lynn C. O'Connor, Buttonwood Hosp. of Burlington, County Route 530, New Lisbon, NJ 08064, 609-726-7000.	NJ	06/27/91
Ms. Tamara W. Moreland, Eastern Shore Nursing & Conva, 1419 Rt. 9 N., Cape May Court House, NJ 08210, 609-465-2260.	NJ	06/28/91
Mr. Consuelo Vaca, Nurse Care Registry, Inc., 25-31 30th Road, Astoria, NY 11102, 718-204-8585.	NY	06/07/91
Mr. Patrick Michael Kane, St. Patrick's Home, 66 Van Cortlandt Park, South, Bronx, NY 10463, 215-519-2800.	NY	06/13/91
Mr. Frank N. Liguori, Olsten Health Care Services, The Olsten Corporation d/b/a, Smithtown, NY 11787, 516-366-1900.	NY	06/20/91
Mr. Ronald T. Mullahey, Vassar Brothers Hospital, Reade Place, Poughkeepsie, NY 12601, 914-437-3017.	NY	06/26/91
Mr. David Fridkin, Hempstead Gen'l Hosp. Med. Ct, 800 Front Street, Hempstead, NY 11551, 516-560-1236.	NY	06/27/91
Mr. Erie D. Chapman III, Riverside Methodist Hospital, 3535 Olentangy River Rd., Columbus, OH 43214, 614-261-5165.	OH	06/13/91
Mr. John F. Mirabito, Wilson Memorial Hospital, 915 W. Michigan St., Sidney, OH 45365, 513-498-2311.	OH	06/13/91
Ms. Sharon L. Reynolds, Northland Terrace, Inc., 5700 Karl Rd., Columbus, OH 43229, 614-846-5420.	OH	06/26/91
Ms. Thalia H. Munoz, Starr County Hosp. District, DB Starr County Memorial Hosp., Rio Grande City, TX 78582, 512-487-5561.	TX	06/07/91
Mr. Rex C. McRae, Arlington Mem. Hospital Found, 800 W. Randol Mill Road, Arlington, TX 76012, 817-548-6160.	TX	06/13/91
Mr. William A. Gregory, Diagnostic Center Hospital, 6447 Main Street, Houston, TX 77030, 713-790-0790.	TX	06/13/91
Mr. Paul Crafts, AMI—Park Plaza Hosp., 1313 Hermann Drive, Houston, TX 77004, 713-527-5092.	TX	06/26/91
Mr. David M. Collins, Humana Hospital—Abilene, 6250 Hwy 83-83 at Antilley Rd., Abilene, TX 79606, 915-691-2430.	TX	06/28/91
Mr. Jim Salyer, Memorial Hospital System North, 1635 North Loop West, Houston, TX 77008, 713-867-3300.	TX	06/28/91
Mr. Bill Hyslop, Memorial Hospital System South, 11800 Astoria Blvd., Houston, TX 77089, 713-929-6195.	TX	06/28/91
Mr. Edward Myers, Memorial Hospital System SW, 7600 Beechnut, Houston, TX 77074, 713-776-5525.	TX	06/28/91
Ms. Nancy A. Kulas, Northgate Rehabilitation Cent, Beverly Enterprises—Calif., Inc., Seattle, WA 98133, 916-635-3806.	WA	06/07/91
Ms. Nancy A. Kulas, Pinehurst Park Terrace, Beverly Enterprises—Calif., Inc., Seattle, WA 98155, 916-635-3806.	WA	06/07/91
Total Attestations		90

[FR Doc. 91-17449 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Utah State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah State Plan and the adoption of subpart E to part 1952 containing the decision. Utah was granted final approval on section 18(e) of the Act on July 16, 1985. By law (section 63-46a-16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and "shall be received in all the courts, and by all the judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *. Under the old standards adoption process, the Utah State plan provides for the Adoption of State Standards in the following manner:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Division of Administrative Rules, State Archivist Building certifies and publishes copies of the Rules and Regulations.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act (chapter 46a, title 63, Utah annotated, 1953) which became effective on April 29, 1985. On May 6, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the **Federal Register**. The plan supplement was published in the **Federal Register** (53 FR 43688) on October 28, 1988. The supplement provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

By letter dated February 7, 1991, from Douglas J. McVey, Administrator, Industrial Commission of Utah, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted written statements along with copies of the Utah State Digest, to verify

the adoption of standards by reference from the Code of Federal Regulations. The adoption by reference standards actions occurred as follows:

1. The Utah Occupational Safety and Health Administration on July 1, 1989, published for adoption by reference, 29 CFR 1910.21 through 1910.1200 of the revised as of July 1, 1988, edition, and 29 CFR 1926.20 through 29 CFR 1926.1050 of the revised as of July 1, 1987, edition. The State Standard became effective on August 1, 1989.

2. The Utah Occupational Safety and Health Division on March 15, 1990, published for adoption by reference the revised as of July 1, 1988, edition of 29 CFR part 1910 and 29 CFR part 1926; the new Federal Standard, Control of Hazardous Energy Source (Lockout/Tagout), Final Rule of 29 CFR 1910.147 as published in 54 FR 36643; and, the new Federal Standard, Excavations, Final Rule of 29 CFR 1926.650, 651, 652 and appendix A–F as published in 54 FR 45894. The effective date of the State Standards was April 15, 1990.

3. The Utah Occupational Safety and Health Division adopted by reference on June 1, 1990, the new Federal Standard, Occupational Exposures to Hazardous Chemical in Laboratories; Final Rule of 29 CFR 1910.1450 as published in 55 FR 3300. The effective date of the State Standard was July 1, 1990.

4. The Utah Occupational Safety and Health Division adopted by reference on January 1, 1991, the revised as of July 1, 1990, editions 29 CFR part 1910 (General Industry) and 29 CFR part 1926 (Construction) standards. The State Standards became effective on February 1, 1991.

5. The Utah Occupational Safety and Health Division adopted by reference on May 25, 1991, the new Federal Standard, Electrical Safety-Related Work Practices; Final Rule of 29 CFR part 1910 as published in 55 FR 31984. The effective date of the State Standard is July 15, 1991.

Decision

The statement of incorporation of the aforementioned Federal Standards by reference has been printed in the Utah Administrative 1990 Code. The code contains the statement of the incorporation of Federal Standards by reference as compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference from 29 CFR part 1910 and 29 CFR part 1926 are identical to Federal Standards with no differences and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director, Federal-State Operations, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious. This decision is effective July 23, 1991.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colo., this 17th day of June 1991.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 91–17454 Filed 7–22–91; 8:45 am]

BILLING CODE 4510–26–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST); Panel on Science and Technology and National Security

The Panel on Science and Technology and National Security of the President's Council of Advisors on Science and Technology (PCAST) will meet on August 5–6, 1991. The meeting will begin at 9 a.m. in Conference Room 476, Old Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Panel is to advise the Council on matters involving science and technology and national security.

Proposed Agenda

1. Briefing of the Panel on problems of national security by the Office of Science and Technology Policy and the National Security Council.

2. Briefing of the Panel on problems of national security by the Department of Defense.

All sessions will be closed to the public.

The briefings on the national security issues necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. The meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

Dated: July 16, 1991.

Kenneth P. Yale,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 91–17425 Filed 7–22–91; 8:45 am]

BILLING CODE 3170–01–M

POSTAL RATE COMMISSION

[Docket No. A91–8; Order No. 892]

Angus, Minnesota 56712 (Mildred Stroble, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

July 17, 1991.

Name of Affected Post Office: Angus, Minnesota 56712.

Name(s) of Petitioner(s): Mildred Stroble.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: July 15, 1991.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

2. Effect on employees (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before July 30, 1991.

(B) The Secretary shall publish this notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Augustus, Minnesota 56712

July 15, 1991—Filling of Petition.

July 17, 1991—Notice and Order of Filing of Appeal.

August 9, 1991.—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).

August 19, 1991—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).

September 10, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c)).

September 25, 1991—Petitioner's Reply Brief should Petitioners choose to file one (see 39 CFR 3001.115(d)).

October 2, 1991—Deadline for motions by any party requesting oral argument. The Commisson will schedule oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).

November 12, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91-17391 Filed 7-22-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Inc.

July 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Digicon, Inc.
Common Stock, $.01 Par Value (File No. 7-7086)

Marvel Entertainment Group, Inc.
Common Stock, $.01 Par Value (File No. 7-7087)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available, to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17462 Filed 7-22-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

July 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Calgon Carbon Corp.
Common Stock, $.01 Par Value (File No. 7-7082)

Escagenetics Corp.
Common Stock, $.0001 Par Value (File No. 7-7083)

Fisher Price, Inc.
Common Stock, $.01 Par Value (File No. 7-7084)

Total Canada Oil & Gas Ltd.
Common Stock, No Par Value (File No. 7-7085)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17463 Filed 7-22-91;8:45am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Marvel Entertainment Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-7088)

Telecom Corporation of New Zealand, Ltd.
American Depository Shares (File No. 7-7089)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17464 Filed 7-22-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Spaghetti Warehouse, Inc., Common Stock, $0.01 Par Value (File No. 1-10291)

July 17, 1991.

Spaghetti Warehouse, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on June 27, 1991, the Company's common stock commenced trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 7, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17465 Filed 7-22-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1434]

Determination To Waive the Transfer of Foreign Assistance Funds Under the Fishermen's Protective Act

Pursuant to the authority vested in me by Executive Order 11772, I hereby certify that it is in the national interest not to transfer to the account established in the Treasury pursuant to section 7(c) of the Fishermen's Protective Act (22 U.S.C. 1977(c)) or to the Fishermen's Protective Fund established by section 9 of the Fishermen's Protective Act (22 U.S.C. 1979) funds from the Foreign Assistance Act of 1961, as amended, programmed for Mexico or any funds which might be programmed for Mexico, in the amount of $53,384.53. This is the amount of previously unreported payments and certifications made prior to March 31, 1991 which have been reimbursed by the Secretary of State for fishing boat seizures by Mexico in accordance with section 3 of the Fisherman's Protective Act.

This determination, which satisfies the requirements of section 5(b) of the Fishermen's Protective Act (22 U.S.C. 1975(b)), shall be reported to the Congress immediately and shall be published in the **Federal Register**.

Dated: July 5, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-17394 Filed 7-22-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 12, 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: Mr. C. Nick Spithas, 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 July 16, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 18114.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.547, 121.583.

Description of Relief Sought: To renew Exemption No. 2600G which allows Federal Express Corporation to carry reporters, photographers, or journalists aboard its Boeing B-747 aircraft without complying with the passenger carrying requirements of FAR part 121. Exemption No. 2600G expires November 30, 1991.

Docket No.: 26578.

Petitioner: American Airlines.

Sections of the FAR Affected: 14 CFR part 43.

Description of Relief Sought: To permit American Airlines, Inc., to utilize non-certificated personnel, both ground

and flight, to replace spent passenger reading bulbs.

Docket No.: 26590.

Petitioner: SIMCON Training Centers.

Sections of the FAR Affected: 14 CFR 61.56(b)(1).

Description of Relief Sought: To allow SIMCON Training Centers to use a pilot ground trainer to meet the requirements of § 61.57(e)(2) to conduct both flight reviews and instrument competency checks during a training cycle.

Docket No.: 26591.

Petitioner: Mountain Bird Inc., dba Salmon Air Taxi and Challis Aviation.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow Mountain Bird Inc., dba Salmon Air Taxi and Challis Aviation pilots to remove/install passenger seats in aircraft under part 135.

Docket No.: 26592.

Petitioner: Philadelphia Jet Service.

Sections of the FAR Affected: 14 CFR 135.165(b).

Description of Relief Sought: To allow Philadelphia Jet Service to operate its HS125-700A aircraft in extended overwater operations with a single high-frequency communications system.

Dispositions of Petitions

Docket No.: 26217.

Petitioner: Purdue University.

Sections of the FAR Affected: 14 CFR 61.151(a), 61.155(b)(2).

Description of Relief Sought/Disposition: To allow Purdue students who are 21 years or older and have only a minimum of 250 hours total time, to take the FAA Airline Transport Pilot (ATP) or Dispatcher written tests, without complying with the 23 years old and 1,500 flight hours required by the regulations.

DENIAL, July 3, 1991, Exemption No. 5329

Docket No.: 25652.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR part 141, appendix H, paragraph (3)(c)(1) and (3)

Description of Relief Sought/Disposition: To allow students to enroll in the Airplane Certification Course prior to the students completing the flight portion of the Commerical Pilot-Airplane Certification/Instrument-Airplane Rating Course and prior to enrollment in an airplane instructor rating course.

GRANT, July 9, 1991, Exemption No. 5330

[FR Doc. 91-17424 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Circa 1492: Art in the Age of Exploration" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about October 12, 1991, to on or about January 12, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Alberto J. Mora,

General Counsel.

[FR Doc. 91-17563 Filed 7-22-91; 8:45 am]

BILLING CODE 6230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 22, 1991.

Dated: July 17, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistance Secretary for Information Resources Policies and Oversight.

Extension

1. Notice of Default and Intention to Foreclose, VA Form 26-6850a
2. The form is used by holders of guaranteed or insured loans to notify VA of a loan that is in defaut by reason of nonpayment of installments.
3. Businesses or other for-profit
4. 32,355 hours
5. 20 minutes
6. On occasion
7. 97,064 responses.

[FR Doc. 91-17479 Filed 7-22-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or

[1] A copy of this list may be obtained by contracting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 22, 1991.

Dated: July 18, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistance Secretary for Information Resources Policies and Oversight.

New Collection

1. VA MATIC Change, VA Form 29-0165
2. The form is used by the insured to request VA to change the account number and/or financial institution from which a VA MATIC deduction was previously authorized.
3. Individuals or households
4. 1,250 hours
5. 15 minutes
6. On occasion
7. 5,000 respondents

Extension

1. Manufactured Home Appraisal Report, VA Form 26-8712
2. The form is used by VA fee and staff appraisers to establish the reasonable value of used manufactured home units proposed for financing and in the event of foreclosure, to ascertain the value of units for resale purposes.
3. Individuals or households; Businesses or other for-profit, Small businesses or organizations
4. The actual annual reporting hours is 6,300. However, the requirement for appraisal reports is a common practice in the housing industry, one hour is requested for reporting purposes.
5. 1½ hours
6. On occasion
7. 4,200 responses.

[FR Doc. 91-17480 Filed 7-22-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 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 ELECTION COMMISSION

"FEDERAL REGISTER" NO. 91-17286.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 25, 1991 at 10:00 a.m.

CHANGE IN MEETING: The following item has been added to the agenda.

Final audit report on Jack Kemp for President and the Kemp/Dannemeyer and Victory '88 Joint Fundraising Committee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 91-17574 Filed 7-19-91; 12:31 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 29, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.

2. Federal Reserve Bank and Branch director appointments.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17619 Filed 7-19-91; 3:42 pm]

BILLING CODE 6210-01-M

federal register

Tuesday
July 23, 1991

Part II

Office of Government Ethics

5 CFR Part 2635

Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics proposes to issue uniform standards of ethical conduct for officers and employees of the executive branch of the Federal Government (hereinafter, Government) that will supersede most of subparts A, B and C of 5 CFR part 735 and agency regulations issued thereunder, as well as 5 CFR 2635.101 of the Office of Government Ethics regulations. The new standards issued by the Office of Government Ethics will be published at revised 5 CFR part 2635, consistent with the earlier transfer and redesignation of other Office of Government Ethics regulations. See 54 **Federal Register** 50229–50231 (December 5, 1989).

The proposed rule establishes standards relating to the receipt of gifts, whether from prohibited sources, because of official position, or between employees. It establishes standards for dealing with the employee's own and other financial interests that conflict with the performance of an employee's official duties. These include disqualification requirements that apply when a matter to which the employee is assigned affects a person with whom he is seeking employment. In addition to standards relating to use of official position and time, Government property, and nonpublic information, it establishes specific standards for application to outside activities in which an employee may participate, including fundraising and outside employment.

DATES: Comments by agencies and the public are invited and are due September 20, 1991.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention Ms. Wilcox.

FOR FURTHER INFORMATION CONTACT: Leslie Wilcox or Julie Loring, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

SUBSTANTIVE DISCUSSION, TABLE OF CONTENTS

I. Summary of Legal Background
II. General Provisions
III. Gifts from Outside Sources
IV. Gifts between Employees
V. Conflicting Financial Interests
VI. Impartiality in Performing Official Duties
VII. Seeking Other Employment
VIII. Misuse of Position
IX. Outside Activities
X. Revocation by OPM of Superseded Portions of 5 CFR Part 735 and by OGE of Current 5 CFR 2635.101
XI. Matters of Regulatory Procedure

I. Summary of Legal Background

Since 1965, officers and employees of the executive branch (employees) have been subject to individual agency regulations setting forth standards of conduct. Underlying standards common to all existing executive department and agency regulations are contained in parts I and II of Executive Order 11222 of May 8, 1965, as amended, and are implemented by Office of Personnel Management regulations at 5 CFR part 735, subparts A–C.

Consistent with the decentralized regulatory scheme established by the 1965 Executive order, subpart A of 5 CFR part 735 required each executive agency to issue regulations implementing part 735 and prescribing additional standards of ethical conduct appropriate to its particular functions and activities, including exceptions to the restrictions on solicitation or acceptance of gifts from prohibited sources.

In early 1989, as part of a comprehensive review of the ethics laws applicable to all three branches of Government, the President's Commission on Federal Ethics Law Reform recommended that the standards of conduct be updated and that the Office of Government Ethics (OGE) be given authority to issue uniform regulations applicable to all agencies within the executive branch. Thereafter, on April 12, 1989, President Bush issued Executive Order 12674 revoking the 1965 Executive order. Executive Order 12674 was modified by Executive Order 12731, October 17, 1990. The modified Executive order is hereinafter referred to as Executive Order 12674.

Section 201(a) of the new Executive order authorizes OGE, in consultation with the Attorney General and the Office of Personnel Management, to issue regulations that "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable." Section 201(c) of the new Executive order further authorizes OGE, with the concurrence of the Attorney General, to issue regulations interpreting 18 U.S.C. 207–209.

Part I of Executive Order 12674 incorporates most of the concepts contained in the 1965 Executive order and imposes additional standards, including a prohibition in Section 102 on receipt of outside earned income by Presidential appointees to full-time noncareer positions. Under the Executive order, special Government employees are subject to the same basic principles of ethical conduct that apply to other executive branch employees.

Section 502(a) of Executive Order 12674 provides that, except insofar as irreconcilable with its provisions, regulations issued under the 1965 Executive order shall remain in effect until properly amended, modified, or revoked. Under this savings provision, individual agency regulations remain in effect until the uniform regulations, which are the subject of this notice, take effect. Because existing standards cannot be reconciled with the prohibition on receipt of outside earned income applicable to Presidential appointees to full-time noncareer positions, that provision became effective on April 12, 1989.

As did its predecessor, Executive Order 12674 prohibits employees from soliciting or accepting gifts from specified categories of persons. Title III of the Ethics Reform Act of 1989 amended title 5 of the U.S. Code to add a new section 7353 which contains virtually identical language restricting the solicitation or acceptance of gifts. In its statutory form, this prohibition applies to personnel in all three branches of Government. It authorizes OGE to issue implementing regulations for the executive branch, including "reasonable exceptions as may be appropriate." Thus, the draft regulations contained in subpart B of the proposed rule implement 5 U.S.C. 7353 as well as Section 101(d) of Executive Order 12674.

Under current part 735 and § 2635.101 of 5 CFR and implementing agency regulations, employees are prohibited from giving gifts to official superiors and from accepting gifts from employees receiving less pay than themselves. This prohibition at 5 CFR 735.202(d) is based on the longstanding statutory prohibition against gifts to superiors at 5 U.S.C. 7351. The Ethics Reform Act of 1989 amended section 7351 to give OGE authority to issue implementing regulations applicable to employees of the executive branch. These are contained in subpart C of the proposed rule.

Title VI of the Ethics Reform Act of 1989 added three other provisions that impact directly upon the outside activities of employees, other than special Government employees. One prohibits receipt of honoraria (payment for an appearance, speech, or article) by any individual while serving as an

officer or employee. Another limits receipt of outside earned income by certain noncareer employees paid at or above the basic rate for a position above GS–15. The third prohibits those same noncareer employees from engaging in certain outside employment activities. These three provisions are implemented by 5 CFR part 2636, which was issued by OGE as an interim rule at 56 FR 1721–1730 (January 7, 1991). Relevant provisions of that interim rule are cross-referenced in the outside activities provisions at subpart H of this proposed rule to ensure the review of relevant regulations by covered noncareer employees and by other employees who wish to receive compensation for an appearance, speech, or article.

This proposed rule is published by the Office of Government Ethics (OGE) in consultation with the Department of Justice and the Office of Personnel Management pursuant to Section 201(a) and (c) of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731 of October 17, 1990, and authorities contained in titles I and IV of the Ethics in Government Act of 1978, Public Law 95–521, October 26, 1978, as amended, 5 U.S.C. appendixes III and IV, and 5 U.S.C. 7351(d)(1) and 7353(b)(1) as added by the Ethics Reform Act of 1989, Public Law 101–194, November 30, 1989, as amended. Formerly a part of the Office of Personnel Management, the Office of Government Ethics became a separate executive branch agency on October 1, 1989 pursuant to Sections 3 and 10 of the 1988 OGE reauthorization legislation, Public Law 100–598. Hence, OGE is issuing this proposed rule as revised part 2635 in OGE's chapter XVI of 5 CFR.

II. General Provisions

Subpart A of the proposed rule includes initial sections setting forth the basic obligation of public service and definitions that apply throughout the subpart.

Section 2635.101 of subpart A, as drafted, restates the principles of ethical conduct set forth at section 101 of Executive Order 12674 and the obligation to adhere to the standards set forth in the proposed rule and supplemental agency regulations. With the exception of paragraphs (b)(4), (b)(6) and (b)(14), the general principles set forth in § 2635.101(b) are restated verbatim from Executive Order 12674. These principles and the conflict of interest statutes contained in Chapter 11 of title 18 of the United States Code are the basis for the more specific standards set forth in subsequent subparts of the proposed rule. The final sentence of § 2635.101(b) would require employees to apply the principles of ethical conduct in determining whether conduct not otherwise addressed in the proposed rule is proper.

The three paragraphs contained in proposed § 2635.101(b) that are not restated verbatim from Executive Order 12674 warrant specific comment. Paragraph (b)(4) is reworded simply to clarify that subpart B contains the applicable exceptions referred to in section 101(d) of Executive Order 12674. The other two paragraphs are reworded to amplify the meaning of the respective principles.

Section 2635.101(b)(6), as proposed, would add a knowledge standard to the principle at section 101(f) of Executive Order 12674 that employees "shall make no unauthorized commitments or promises of any kind purporting to bind the Government." The knowledge requirement is proposed because employees frequently deal with complex laws and regulations and must make decisions that fall within the gray areas of those authorities. An employee who acts in good faith and without knowledge that he or she is exceeding official authority will not be found to have violated the standards of ethical conduct simply because his or her judgment proves faulty.

The first sentence of proposed § 2635.101(b)(14) is a verbatim restatement of the principle at section 101(n) of Executive Order 12674 that employees shall try to avoid any action that creates an appearance that they are violating the law or the standards set forth in the proposed rule. This appearance standard is one of long standing, derived from the 1965 Executive order. An additional sentence has been added to § 2635.101(b)(14) to reflect case law and longstanding practice, both of which temper the appearance standard by reference to the perspective of a reasonable person with knowledge of the relevant facts. This is intended to ensure that the conduct of employees is judged by a standard of reasonableness.

Section 2635.101(c) is proposed to caution employees that there are conflict of interest statutes that must be considered in conjunction with the standards of ethical conduct in determining whether particular conduct is appropriate. Synopses of the basic conflict of interest statutes at chapter 11 of title 18 of the U.S. Code are contained in relevant portions of the proposed rule and references to these and other generally applicable statutes are included in subpart I of the proposed rule.

While the definitions set forth in § 2635.102 of the proposed rule are largely self-explanatory, the term agency designee warrants specific comment. The proposed rule includes provisions that require the agency designee to make certain determinations or authorize certain conduct. Because the proposed rule is intended for broad application throughout the entire executive branch, OGE has not undertaken to identify which employees within the various agencies should be delegated those responsibilities. Their designation is left to the individual agencies. Most agencies will find it advantageous to designate a number of individuals as agency designees and there is nothing in the proposed rule that limits designations to individuals who are agency ethics officials. Many agencies will find it appropriate to designate supervisors as agency designees for determinations and authorizations affecting their subordinates.

Consistent with the definition of the term employee at section 503(b) of Executive Order 12674, proposed § 2635.103 clarifies that the proposed rule would not apply to enlisted members of the uniformed services. It would, however, apply to officers of the uniformed services. For employees detailed within the Federal Government for periods in excess of 30 days, proposed § 2635.104(a) would provide guidance intended to reconcile any differences in the nonstatutory ethical standards that may exist between agencies or between branches of the Government. And proposed § 2635.104(b) would give designated agency ethics officials authority to exempt from the gift standards in proposed subpart B those employees detailed for more than 6 months to international organizations or to State or local governments under statutory authorities, such as 5 U.S.C. 3343 and 3371. This exemption authority would be limited to cases in which the organization or governmental entity to which the employee is detailed has its own written gift standards.

Proposed § 2635.104(c) would eliminate any differences in ethical standards that might result from application of different supplemental agency regulations to employees posted overseas. While posted abroad, most employees of civilian agencies and some uniformed officers are subject to the direction, coordination and supervision of the Chiefs of the United States Mission. With the exception of those detailed to international organizations, all others posted abroad are under the

command of the United States area military commander. The proposed section would subject those so attached to the respective supplemental agency regulations of the Department of State or the Department of Defense. Others while abroad, including most employees in a temporary duty travel status, would remain subject to the supplemental agency regulations of their respective employing agencies. The Office of the Legal Adviser, Department of State, has advised that the proposed section would enable the Department of State to use its own supplemental agency regulation in combination with the Department's gift acceptance statute to ensure consistency in the conduct of Federal personnel attached to the mission.

As proposed, subpart A contains authority for agencies to issue regulations supplementing the proposed rule. Other than as contemplated by proposed §§ 2635.203(a), 2635.403(a) and 2635.803, most agencies should not find it necessary to issue supplemental agency regulations. However, OGE recognizes that some agencies will need to augment the proposed rule with standards tailored to their operations. As proposed, § 2635.105 would provide a means by which the uniform regulations may be supplemented by agency-specific regulations consistent with the purposes and format of the proposed rule.

Pursuant to section 301(a) of Executive Order 12674, supplemental agency regulations become effective only upon concurrence by and joint issuance with OGE and publication at agency expense in title 5 of the Code of Federal Regulations. Under proposed § 2635.105(c) agencies may, without issuing a supplemental regulation, delegate authority to agency designees and establish certain procedures necessary to comply with the uniform regulations. Agencies are also free to issue handbooks or similar aids to explain the standards contained in the proposed rule and to issue regulations under authorities other than the Executive order. In the past, some agency standards of conduct have included regulatory provisions that derive from authorities other than Executive Order 11222, such as regulations implementing the Hatch Act. In anticipation of the issuance of this proposed rule as a final regulation, agencies should consult with OGE concerning their authority to preserve any such regulatory provisions.

Section 2635.106 of the proposed rule gives general guidance on disciplinary and corrective action and incorporates the concept set forth in section 504 of Executive Order 12674 that the standards issued under the Executive order are not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. Thus, as noted regarding complaints of discrimination, nothing in the proposed rule makes OGE or an agency ethics official an alternate forum for adjudicating or deciding matters for which other procedures are established.

Section 2635.107 of the proposed rule explains that employees may obtain guidance from agency ethics officials regarding their particular responsibilities under the standards of ethical conduct. It provides assurance that those who obtain and follow that guidance will not be subject to disciplinary action. Although it cannot provide this degree of assurance when the conduct involved violates a criminal statute, it reflects the longstanding practice of the Department of Justice in selecting cases for prosecution to take into consideration an employee's good faith reliance on the advice of agency ethics officials.

III. Gifts From Outside Sources

Subpart B of the proposed rule implements 5 U.S.C. 7353, as added by the Ethics Reform Act of 1989, and section 101(d) of Executive Order 12674. Both provide that an employee shall not solicit or accept gifts from certain (prohibited) sources unless permitted by a regulatory exception. The Executive order and the statute both augment the list of prohibited sources contained in the 1965 Executive order by adding a fourth category—any person or entity seeking official action from the employee's agency.

Section 2635.202(a) of subpart B, as drafted, would prohibit an employee from soliciting or accepting a gift from a prohibited source or a gift given because of the employee's official position, unless the item is excluded from the definition of a gift or falls within one of the exceptions in proposed § 2635.204. While this may appear to expand the scope of the gift prohibitions presently contained in 5 CFR 735.202(a), it reflects OGE's longstanding interpretation of the current requirement at 5 CFR 735.201(a) that an employee avoid any action which might result in or create the appearance of using public office for private gain. This prohibition continues to apply under section 101(g) of Executive Order 12674, as restated at § 2635.101(b)(7) of the proposed rule. Accepting a gift offered because of one's official position creates an appearance of using public office for private gain.

Section 2635.202(b), as drafted, explains the relationship between the standards set forth in proposed subpart B and 18 U.S.C. 201(c)(1)(B). Frequently referred to as the illegal gratuities statute, section 201(c)(1)(B) makes it a crime for a public official "otherwise than as provided by law for the proper discharge of official duty" to demand, seek, receive, accept or agree to receive or accept anything of value "for or because of any official act performed or to be performed by such official or person." As drafted, the language of § 2635.202(b) reflects congressional intent that the acceptance of a gift in accordance with the exceptions and other standards set forth in subpart B will not subject an employee to prosecution for violation of the illegal gratuities statute. Congressional Record for November 16, 1989, at page H8758. By cross-reference to § 2635.202(c)(1) of the proposed rule, § 2635.202(b) balances that purpose with the statutory proviso at 5 U.S.C. 7353(b)(1)(B) that an employee may not accept a gift, even pursuant to a regulatory exception, in return for being influenced in the performance of any official act. While such a gift, if corruptly sought or accepted, would constitute a bribe prosecutable under 18 U.S.C. 201(b)(2)(A), the language of § 2635.202(b) preserves the possibility of prosecution under the illegal gratuities statute where the element of corruption cannot be established.

Section 2635.202(c), as drafted, sets forth five limitations on the use of the exceptions contained in § 2635.204, other than § 2635.204(h). The first reflects the statutory proviso at 5 U.S.C. 7353(b)(1)(B) that a gift may not be accepted in return for being influenced in the performance of an official act. The second makes it clear that any gift that is coerced is improper notwithstanding that it otherwise would come within one of the proposed exceptions at § 2635.204. And the fifth makes it clear that, except as provided in proposed § 2635.202(b), subpart B does not sanction the solicitation or acceptance of any gift that would violate a statute. For clarification, paragraph (5) of the section includes synopses of 18 U.S.C. 201(b), 18 U.S.C. 209 and 41 U.S.C. 423(b)(2).

The limitations in paragraphs (3) and (4) of § 2635.202(c) are derived from the principles of ethical conduct restated at §§ 2635.101 (b)(7) and (b)(8). The acceptance of gifts on a recurring or frequent basis, whether from the same or different sources, gives rise to an appearance of use of public office for private gain. And there are circumstances under which an employee

should decline even an unsolicited gift that falls within the gift exceptions to avoid an appearance of loss of impartiality. While these proposed limitations may appear to leave employees vulnerable to criticism for accepting gifts that fall within the gift exceptions, OGE believes it is inappropriate to authorize the *de minimis* gift exception discussed below without requiring employees to exercise a degree of judgment in accepting and declining gifts.

Section 2635.203 of the proposed rule contains six definitions applicable to subpart B. One of the more significant is the definition of the term prohibited source at § 2635.203(d). While the first four paragraphs of § 2635.203(d) merely restate language in the statute and Executive Order 12674, the fifth is an application of those definitions to certain organizations whose members are prohibited sources. The extension of the prohibited source definition to include an organization, the majority of whose members are themselves prohibited sources, is consistent with OGE informal advisory opinion 84 × 5 issued May 1, 1984 and amended August 24, 1984, as published in The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988).

As contemplated by Executive Order 12674 and 5 U.S.C. 7353, the proposed definition of the term gift at § 2635.203(b) is expansive. Minor differences between the language of Executive Order 12674 and the statute have been reconciled by adopting the language from the Executive order which limits the definition of a gift to anything of monetary value. The proposed definition includes seven specific exclusions. Some, such as the exclusions for loans from financial institutions, broadly available commercial discounts, and rewards and prizes parallel exceptions currently found in the model regulations at 5 CFR 735.202(b) and in most agency standards of conduct regulations. One effect of treating these as exclusions from the definition of a gift, rather than as exceptions under proposed § 2635.204, is to permit employees to accept these items without regard to the appearance limitations at proposed § 2635.202(c).

Greeting cards, plaques, certificates, trophies, and similar items which have only nominal intrinsic value are excluded from the proposed definition of the term gift to enable employees to accept such items without having to consider whether their market value falls within the *de minimis* exception at § 2635.204(a). Plaques and certificates are frequently presented to an employee in a public forum. Because they are ordinarily engraved, embossed or otherwise adorned with the employee's name, they ordinarily are of value to no one other than the employee and the declination of such items causes needless discomfort to both the employee and the donor. A plaque or trophy which is itself an art object or utilitarian item, such as a clock, or which incorporates materials of significant value would not come within this exclusion.

The exclusions for anything "paid for by the Government or secured by the Government under Government contract" and for items "accepted by the Government under specific statutory authority" are intended simply to clarify that items provided to the employee by the Government are not gifts from outside sources and, thus, are not covered by subpart B.

The proposed definition of the term agency at § 2635.203(a) warrants comment. For use throughout the proposed rule, the term agency is defined at proposed § 2635.102(a) to have the meaning set forth in 5 U.S.C. 105. That definition incorporates the definition at 5 U.S.C. 101 of executive departments. Thus, the agency of an employee of the Department of the Army is the entire Department of Defense and, as to that Army employee, a Navy contractor is a prohibited source. For purposes of subpart B, proposed section 2635.203(a) gives the fourteen departments authority, by supplemental agency regulation, to designate agencies within the department as separate agencies. Thus, for example, the Department of Defense could establish the Army, Navy and Air Force as separate agencies for purposes of subpart B. This designation would not be effective, for example, as to the Secretaries of the three services or to any Department level employee.

Section 2635.204, as proposed, sets forth exceptions to the basic prohibition against solicitation or acceptance of a gift from a prohibited source or given because of official position. Under present 5 CFR 735.202 and 2635.101, as well as agency standards of conduct regulations currently in effect, the gift exceptions are narrowly drawn. For example, they have permitted acceptance of promotional items of nominal value and food and refreshments of nominal value on infrequent occasions in the course of a luncheon or dinner meeting. While the limited nature of these exceptions has ensured that employees do not accept gifts in circumstances that would subject them to criticism, the exceptions have themselves been a source of criticism. Many have complained that the exceptions are so overly technical and difficult to apply to specific situations that they tend to trivialize agency ethics programs.

One of the more significant features of the draft rule is the proposal at § 2635.204(a) to adopt a *de minimis* exception which would allow employees to accept unsolicited gifts having an aggregate market value of $25 or less per occasion. Within any calendar year, an employee could not use this particular exception to accept gifts with an aggregate market value in excess of $100 from any single source. This *de minimis* exception has the virtue of establishing a standard that can be easily understood and applied to any gift situation. While it represents a significant departure from prior gift rules applicable to executive branch employees, OGE believes it is a reasonable and simple standard that reduces the need for employees to become aware of a number of technical exceptions dealing with specific situations.

The underlying statute, 5 U.S.C. 7353, was added by the Ethics Reform Act of 1989 and applies to individuals serving in all three branches of Government. Titles VIII and IX of the Reform Act concurrently amended the rules of the House of Representatives and Senate to create a $75 *de minimis* exception applicable to Members, as well as to employees, of both houses of Congress. The rules of the House of Representatives allow the acceptance of gifts with a fair market value of $75 or less from prohibited sources. The Senate rules allow acceptance of gifts less than $75. While the rules of both houses restrict the aggregate amount Members and employees may accept from any single source, gifts within the *de minimis* amount established for the respective house are disregarded in determining the aggregate value of gifts received from a single source. Unlike the legislative branch rules, § 2635.204(a) of this proposed rule for the executive branch would require the aggregation of every *de minimis* gift, whatever its value, received from a single source for purposes of applying the annual $100 aggregate limitation.

Section 2635.204(b), as proposed, is similar to the exception for gifts from friends and relatives that has long been permitted under most agency standards of conduct regulations currently in effect.

Section 2635.204(c) is a proposed new exception that is necessary to accommodate the expansion of the basic gift prohibitions to cover gifts given because of an employee's official position. Under this section, an employee could accept certain benefits or discounts even though they are available because of his or her status as a Federal employee. Opportunities available to the general public or to all Government employees or all uniformed personnel are excluded from the proposed definition of a gift at § 2635.203(b)(2) of this subpart. The exception at proposed § 2635.204(c) is addressed to discounts and other benefits offered to a more limited class. Where such an offer is extended by someone other than a prohibited source to a class encompassing a smaller group of Federal employees, such as a discount offered to all employees of a particular agency, the offer may be accepted if its availability is not limited in a manner that discriminates on the basis of rank, rate of pay, or type of official responsibility. For example, this exception would not permit the acceptance of a discounted membership rate offered only to employees of an agency who are members of the Senior Executive Service. It would, however, permit a discount offered by someone other than a prohibited source to all employees of an agency or to all employees of an agency in a particular city or county.

Section 2635.204(d)(1), as proposed, would allow employees to accept certain awards for public service or individual achievement. Many such awards are given for accomplishments that relate to an employee's official responsibilities and, thus, in the absence of this exception, would be prohibited by § 2635.202(a)(2), even when bestowed by someone other than a prohibited source. The exception allows an employee to accept such an award, other than cash or an investment interest, having a market value of $200 or less when given by someone other than a person whose interests may be substantially affected by the performance or nonperformance of the employee's official duties. Other awards given by such persons, including any award of cash or any noncash award worth more than $200 may be accepted when approved in writing by an agency ethics official in accordance with the standards specified. Regardless of the value of other gifts given in connection with the award, meals and entertainment for the employee and for members of his or her family at any event at which presentation or recognition takes place may be accepted. Such acceptance is not limited to meals and entertainment extended to members of the employee's immediate family. Acceptance would be appropriate, for example, if there is a family relationship in the nature of that encompassed by the definition of a relative at 5 U.S.C. app. 109(16). When approved in writing by an agency ethics official in accordance with the standards specified in § 2635.204(d)(2), employees also may accept honorary degrees and personal tributes, as well as meals and entertainment for themselves and their families at the event at which the presentation or tribute takes place.

Section 2635.204(e), as proposed, contains three exceptions that relate to the outside business and employment relationships of employees and their spouses. Under Executive Order 12674, special Government employees are subject to the same basic principles of ethical conduct that apply to regular employees. Because special Government employees serve the Government only temporarily, often on an intermittent basis, it is expected that many will have other employment and business relationships. The proposed exception at § 2635.204(e)(2) is intended to ensure that the gift prohibitions do not interfere with proper non-Federal employment and business pursuits of special Government employees. Proposed § 2635.204(e)(1) would create a similar exception for benefits which result from the business or employment relationships of any employee's spouse. Section 2635.204(e)(3), as proposed, covers employees seeking employment with prohibited sources. After the employee has complied with the disqualification requirements of subpart F of the proposed rule, the employee may accept transportation, entertainment or any similar gift customarily provided by the prospective employer in connection with its conduct of employment discussions.

Section 2635.204(f) relating to gifts from political organizations is proposed to ensure that the standards of conduct do not hamper the political activities of the relatively small class of higher-level employees who are exempt from the Hatch Act restrictions. It is limited to items provided by political organizations. While these organizations ordinarily will not be prohibited sources, invitations to speak or attend political fundraising events may be extended to these employees because of the positions they hold with the Federal Government.

Where attendance is determined to be in the interest of the agency, proposed § 2635.204(g) would allow an employee to accept a sponsor's offer of all or part of a gift of free attendance at widely-attended gatherings concerning subjects of mutual interest to a number of parties that the employee attends on his own time and at events at which the employee is a speaker or panel participant. Where the employee's acceptance of free attendance is authorized, proposed § 2635.204(g)(5) would provide limited authority for attendance by an accompanying spouse. The limitation proposed at § 2635.204(g)(4) regarding the source of funds used to finance the employee's attendance is added to ensure that the invitation is from the sponsor of the event and that a nominal sponsor is not used to disguise an invitation from another source.

With an exception for days on which the employee is invited to serve as a speaker or panel participant, proposed § 2635.204(g)(2) would require a written determination by the agency designee that the employee's attendance at the event is in the interest of the Government. If the sponsor has interests that would be substantially affected by performance of the employee's duties, that determination must include an appearance analysis. The fact that an employee is invited to serve as a speaker on one of several days of an event does not necessarily permit the employee's acceptance of waiver of the attendance fee for the entire event. Without a written determination of agency interest, the employee may only accept free attendance at substantive portions of the event that take place on the day he or she speaks. Even though a sponsor offers free attendance at an entire event, speakers and others should only be authorized to accept free attendance at those portions of the event that are in the agency's interest.

The exception for widely-attended gatherings at § 2635.204(g)(1)(ii) is one that has been incorporated into the standards of conduct regulations of many agencies. While these events are often sponsored by associations, the exception is not limited to events for which there is an association or other group sponsor. The exception for speakers and panel participants at § 2635.204(g)(1)(i) merely recognizes what has become customary practice—individuals invited as speakers are frequently invited to participate without charge in portions or all of the events at which they are speaking.

Section 2635.204(h), as proposed, is applicable only to gifts to the President or Vice President and to members of their families. The President and Vice

President are not subject to the Standards of Ethical Conduct for Government Officers and Employees imposed by Executive Order 12674. With the exception of 18 U.S.C. 201, they are not subject to the conflict of interest statutes of Chapter II of title 18 of the United States Code. However, 5 U.S.C. 7353, added by the Ethics Reform Act, adopted a broad definition of the term employee that, for the first time, results in the gift prohibitions being made applicable to individuals holding elected positions in all three branches of Government, including the President and Vice President.

The ceremonial and other public duties of the President and Vice President make it impractical to subject them to standards that require an analysis of every gift offered. They are required to file an SF 278 public financial disclosure statement listing gifts aggregating $100 or more from any one source ($250 or more in the case of gifts or reimbursements of transportation, lodgings, food or entertainment). They need not aggregate gifts of $75 or less. In the case of an elected official of the stature of the President or Vice President whose personal conduct is closely scrutinized by the public and the press, this requirement for public disclosure provides sufficient restraint on their acceptance of gifts. To the extent that it does not permit scrutiny of gifts worth less than the amount that triggers the reporting requirement, it is tantamount to an extension to the President and Vice President of an exception not unlike the $75 *de minimis* exception applicable to Members of Congress. OGE anticipates that, as their predecessors have done in the past, the President and Vice President and their successors will establish their own discretionary standards for acceptance of gifts.

Paragraphs (i) and (j) of § 2635.204, as proposed, are crossreferences. The former refers employees to additional exceptions, if any, contained in applicable agency supplemental regulations. Section 2635.204(j) is a reference to additional authorities under which employees may accept gifts; it is not, itself, authority to accept any gift.

Section 2635.205 of the proposed rule deals with the proper disposition of gifts that cannot be accepted, and makes it clear that an employee has a responsibility to return or pay for such gifts. However, perishable gifts, such as food or flowers, may be given to charity or may be used or consumed when shared with others within the recipient's office.

Upon final adoption of the proposed rule, the temporary OGE and Office of Personnel Management rule at 5 CFR 2635.101 continuing the effectiveness of existing agency gift restrictions and exceptions will be revoked. See 54 FR 53310–53311 (December 28, 1989) and the discussion at part X of this preamble, below.

IV. Gifts Between Employees

Subpart C of the proposed rule is intended to supersede 5 CFR 735.202(d), which implements the statutory prohibitions in 5 U.S.C. 7351, Gifts to Superiors. The amendment to that statute by the Ethics Reform Act of 1989 brings the penalties for improper gifts into line with those for violation of the standards of ethical conduct and gives OGE authority to issue implementing regulations applicable to officers and employees of the executive branch.

Because of the statutory definition of the term employee in 5 U.S.C. 7351, the statute does not apply to officers of the uniformed services. In exercising its general rulemaking authority under Executive Order 12674 and title IV of the Ethics in Government Act, OGE nevertheless has determined that the prohibitions on gifts between employees should be applied to officers of the uniformed services to avoid issues of misuse of public office and lack of impartiality that arise when gifts are accepted by superiors from their subordinates. Thus, as a matter of regulation, subpart C of the proposed rule would extend to officers of the uniformed services the same prohibitions as are contained in 5 U.S.C. 7351.

As drafted, proposed § 2635.302(a)(1) amplifies the statutory prohibitions against giving or soliciting for gifts to superiors by adding the phrase directly or indirectly to ensure that the prohibitions are not circumvented by gifts given by the subordinate's family members or by others at the behest of the subordinate. The term indirectly is defined at proposed § 2635.303(b). Proposed § 2635.302(a)(2) amplifies the statutory prohibition against soliciting contributions for gifts to superiors to make it clear that the prohibition applies regardless of whether the gift is solicited for an individual who is the superior of the employee making the solicitation or of the employee from whom a contribution is sought.

Proposed § 2635.302(b) amplifies the statutory language prohibiting any employee from accepting a gift from an employee receiving less pay by adding the phrase "directly or indirectly" to ensure that the prohibition is not circumvented by gifts to family members or to persons designated by the employee receiving the greater amount of pay. For this purpose, the term indirectly is defined at proposed § 2635.303(b) by cross-reference to the definition of that term in subpart B, Gifts from Outside Sources. The statutory prohibition on acceptance of gifts does not precisely mirror the restrictions on giving gifts to superiors. It is broader in scope, prohibiting gifts from any employee receiving less pay, regardless of whether there is a superior-subordinate relationship between donor and recipient. Proposed § 2635.302(b) addresses the unnecessarily broad reach of this prohibition by permitting gifts based on a personal relationship where there is no superior-subordinate relationship between donor and recipient.

Proposed § 2635.302(c) provides that, notwithstanding any exception at proposed § 2635.304, an official superior shall not coerce the offering of a gift from a subordinate.

The definitions of the terms gift and market value in proposed § 2635.303 (a) and (c) include cross-references to the definitions of those terms in subpart B, Gifts from Outside Sources. The definitions have been amplified, however, to ensure that the statutory prohibitions do not interfere with carpool and other mutual arrangements in which there is a proportionate sharing of the expense or effort between employees. The proposed definition of official superior at § 2635.303(d) is drafted to make clear that an employee may have more than one official superior and that individuals in the supervisory chain who direct or evaluate and, thus, supervise the employee's immediate and other superiors are also official superiors of the employee.

The phrase voluntary contribution is defined at proposed § 2635.303(f) to ensure that no employee is coerced to contribute toward even a modest gift for an official superior. Although employees may be given the opportunity to contribute to gifts for superiors, the amount of any contribution they may wish to make is to be left entirely to their discretion. An employee soliciting contributions may suggest an amount to be contributed or may respond to an employee's inquiry regarding an appropriate amount to be contributed if it is made clear that the employee whose contribution is sought is free to contribute less or nothing at all. The definition accommodates the frequent practice of organized luncheons or receptions to honor employees upon special occasions, such as retirement. It

specifically provides that an employee who freely chooses to pay a proportionate share of the total cost in order to attend such an event will be deemed to have made a voluntary contribution.

The proposed rule would create three categories of exceptions to the prohibitions of § 2635.302 (a) and (b). The first is a set of general exceptions at proposed § 2635.304(a) which can be used on an occasional basis, including any occasion on which gifts are traditionally given or exchanged. The statute contemplates that the implementing regulations include an exception for occasions on which gifts are traditionally given or exchanged. After considering a separate exception based on a *de minimis* amount for occasions such as Christmas and birthdays, OGE concluded that an across-the-board $10 *de minimis* exception to be used occasionally and on occasions marked by the exchange or giving of gifts would cause the least confusion. Proposed § 2635.304(a)(1), thus, includes an exception for items with an aggregate market value of $10 or less per occasion.

The three exceptions at § 2635.304 (a)(2) through (a)(4) are proposed to ensure that the subordinate-superior relationship is a comfortable one that allows for an appropriate degree of social interaction. The exception for food and refreshments shared in the office among several employees is intended to permit all members of an office to participate in the modest social events that are common throughout the Government. The exception for personal hospitality provided at the employee's residence is included to reflect current practice. While the statutory prohibition against gifts to superiors is one of long standing, it ordinarily has not been applied to prohibit a subordinate from occasionally inviting a superior to share in a meal at the subordinate's residence or to require a superior's exclusion from a party given in the subordinate's home. The exception at proposed § 2635.304(a)(4) is intended to cover gifts, sometimes referred to as hostess gifts, given by the recipient of personal hospitality. Under this exception, an employee invited to dinner at the home of his official superior may bring a bottle of wine, even though its market value exceeds $10. The proposed exception at § 2635.304(a)(5) is included to ensure that the limitations on gifts between employees do not interfere with the Government's voluntary leave transfer program.

The second category of exceptions for special, infrequent occasions proposed at § 2635.304(b) is similar to the current exception at 5 CFR 735.202(d) for voluntary gifts of nominal value "made on a special occasion such as marriage, illness, or retirement." Consistent with current practice, proposed § 2635.304(b) allows gifts in recognition of infrequently occurring occasions of personal significance and upon occasions such as retirement, resignation or transfer that terminate the superior-subordinate relationship. Gifts on such occasions are not limited to any particular amount, but must be appropriate to the occasion.

The third set of exceptions at proposed § 2635.304(c) specifies those occasions or items for which voluntary contributions may be solicited or made. They are limited to the special, infrequent occasions described in the preceding paragraph and to contributions for food and refreshments to be shared in the office among several employees. Thus, an employee could not solicit contributions from fellow employees for a birthday present for his or her official superior but could give an individual gift worth $10 or could solicit contributions to buy a cake to be shared within the office in celebration of that occasion.

V. Conflicting Financial Interests

Subpart D of the proposed rule contains two sets of standards addressing the problem of financial interests that, in the absence of some remedial step on the employee's part, would conflict with the duties he or she performs for the Government. The standards at proposed § 2635.402 are based on 18 U.S.C. 208(a); the standards at proposed § 2635.403 are required by the principle of ethical conduct restated at proposed § 2635.101(b)(2) of this part. Pending the issuance of more extensive regulations interpreting 18 U.S.C. 208(a), proposed § 2635.402 is included here as necessary to give meaning and context to proposed § 2635.403 and to the impartiality provisions of subpart E, as well as to the provisions of subparts F and H applicable, respectively, to seeking other employment and outside activities.

Proposed § 2635.402 is a restatement of 18 U.S.C. 208(a), amplified to reflect current interpretation of the law and to set forth guidance on means (disqualification, waiver, and divestiture) for avoiding a violation of the statute. The statute prohibits self-dealing by Federal employees. More specifically, it prohibits an employee from participating personally and substantially in any particular matter which, to the employee's knowledge, will affect the employee's own financial interest or that of:

- The employee's spouse, minor child, or general partner;
- Any person the employee serves as officer, director, trustee, general partner or employee; or
- Any person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

While 18 U.S.C. 208(a) prohibits an employee from participating in a particular matter affecting the financial interests of a person with whom he or she is negotiating for or has an arrangement concerning future employment, that particular application of the statute is addressed in subpart F, Seeking Other Employment. There it is combined with standards that impose a similar disqualification obligation upon employees who have taken action to seek employment that falls short of negotiations.

Interests other than the employee's own that are attributed to him or her under 18 U.S.C. 208(a) are referred to as imputed interests and are defined as such in proposed § 2635.402(b)(2). The statutory prohibition at § 2635.402 has been amplified by the phrase direct and predictable to describe the effect on an employee's own or an imputed interest that will require disqualification or other action to avoid a statutory violation. The definition of the phrase personal and substantial is derived from existing regulations at 5 CFR 2637.201(d) issued under the prior version of the post-employment statute, 18 U.S.C. 207, which still applies to those who left Government before January 1, 1991.

The proposed explanation at § 2635.402(c) of the disqualification obligation imposed by the statute warrants specific comment. For most employees to accomplish disqualification, the section imposes no requirement beyond nonparticipation in the matter which affects his or her own or an imputed financial interest. However, depending upon his or her particular duties, it may be necessary for an employee to notify a supervisor of the interest that creates a conflict in order to avoid assignments that would result in violation of the statute.

Unless the individual employee is specifically asked to file a written statement by an agency ethics official or is required to provide evidence of compliance with a recusal requirement contained in an ethics agreement, no requirement for a written disqualification statement is proposed. The statute does not require any formality beyond nonparticipation. A possible regulatory requirement for

notice and written disqualification statements was rejected as unnecessarily burdensome. Most employees can avoid conflicts by properly arranging their assignments with a supervisor. It is often prudent and never inappropriate for an employee to file a written disqualification statement. The proposed regulation includes language and a related example that should cause an employee to consider whether the particular nature of an assignment or of the interest affected makes it prudent to create a written record of the disqualification and, in any given case, an agency ethics official has authority to request a written disqualification statement. However, a written disqualification statement will not protect an employee from prosecution under 18 U.S.C. 208(a) if, in the absence of a waiver, he or she participates personally and substantially in a particular matter affecting his or her own or an imputed financial interest.

Proposed § 2635.402(d) restates the criteria in 18 U.S.C. 208(b) which must be met before a waiver may be issued permitting an employee to participate in a matter from which he or she is otherwise disqualified. OGE will soon be issuing regulatory waivers permitted by 18 U.S.C. 208(b)(2). Pending issuance of those waivers, regulatory waivers issued by agencies under 18 U.S.C. 208(b)(2) in effect prior to November 30, 1989 (the date of amendment of the statute by the Ethics Reform Act) continue to apply.

Violation of 18 U.S.C. 208(a) can always be avoided by selling or otherwise disposing of the interest that would otherwise be affected by performance of the employee's duties. Thus, proposed § 2635.402(e) provides that an employee may voluntarily divest the conflicting interest or, in accordance with proposed § 2635.403, may be required to sell or otherwise divest a particular interest.

Proposed § 2635.402(f) is simply practical advice that an employee should share with a superior enough information about potential conflicts to avoid assignments from which he or she will be disqualified by 18 U.S.C. 208(a).

Proposed § 2635.403 implements the principle restated at § 2635.101(b)(2) of this part that employees shall not hold financial interests that conflict with the conscientious performance of duty. The proposed implementation is necessarily brief. One goal of Executive Order 12674 is a uniform regulation that can be used by executive branch agencies with little further implementation. The area of financial interests, however, is one in which further implementation by some agencies will be necessary. Whether a financial interest conflicts with performance of a particular employee's duties is a determination that ordinarily must be made on an agency-by-agency or case-by-case basis.

Section 2635.403, as proposed, provides that an employee shall not acquire or hold a financial interest that he or she is prohibited from holding by statute, by agency regulation, or by reason of a determination that the holding of such interest would materially impair the employee's ability to perform the duties of his or her position or adversely affect accomplishment of the agency's mission. The reference to statutory prohibitions serves as a caution to employees that they may be subject to agency-specific statutes that prohibit them from holding specified interests. For example, 42 U.S.C. 7211 prohibits supervisory employees of the Department of Energy from having any pecuniary interest in an energy concern.

Section 2635.403(a) is proposed authority under which agencies may, by supplemental agency regulation, prohibit all agency employees or any category of agency employees from acquiring or holding particular financial interests. An agency regulatory prohibition must be based on a determination that the acquisition or holding of such financial interests could give rise to questions concerning the impartiality and objectivity with which agency programs are administered. Proposed § 2635.403(b) provides authority for agencies to direct an employee to sell or to otherwise divest financial interests that will require disqualification from matters so central or critical to the performance of his or her official duties that the employee's ability to perform the duties of the Government position would be materially impaired. It also provides authority to direct divestiture where the employee's holding of an interest would adversely affect accomplishment of the agency's mission because the employee's services cannot be readily replaced.

For purposes of proposed § 2635.403 (a) and (b), the term financial interest is not limited to interests that would require disqualification under 18 U.S.C. 208(a). For example, it would be appropriate for an agency that regulates banks to prohibit its employees from obtaining loans from regulated banks even though the employee's obligation to repay the loan would not be affected by any agency matter affecting the bank. Except as provided in § 2635.402(c)(2), it is limited, however, to interests owned by the employee or imputed to the employee and over which he or she has control. Since disciplinary action would be unlikely to be successful against an employee whose spouse refused to sell stock that was entirely the spouse's own personal property, interests such as these, over which the employee does not have control, are beyond the reach of proposed § 2635.403 (a) and (b). This is true even though the spouse's continued holding of the stock would, under 18 U.S.C. 208(a), preclude the employee from performing particular duties.

Proposed § 2635.403(c)(2) is intended to address certain interests imputed to the employee over which he or she does not have control, including the financial holdings of a person the employee serves as officer, director, trustee, general partner or employee. It would treat as the employee's own financial interest his or her service with the entity, regardless of whether the employee receives compensation for that service. Unlike the financial holdings of the entity, over which he or she may have little or no control, an employee does have control over whether he or she serves as its officer, director, trustee, general partner or employee. By virtue of this definition, an agency would have authority to direct an employee's resignation from a position as a director of a corporation whose interests conflict with the performance of his or her official duties even though the employee may not have control over the affected corporate interest. It is sufficient that the employee can resign his directorship.

VI. Impartiality in Performing Official Duties

Subpart E implements the ethical principles restated at § 2635.101(b)(8) of this proposed rule that an employee shall act impartially and not give preferential treatment to any private organization or individual. To the extent that an employee's lack of impartiality in the performance of official duties might inure or appear to inure to his or her own benefit or to the benefit of certain other persons, the subpart implements the principles restated at § 2635.101(b)(7) and (b)(14) that an employee shall not use public office for private gain and shall endeavor to avoid even an appearance of violating these ethical principles.

Proposed § 2635.502 is addressed to the troublesome area commonly referred to as appearance problems. Most, though not all, appearance problems arise when, because of some personal or business relationship, an employee can be viewed as failing to act impartially in the performance of his or her official duties. The proposed section would

provide a flexible standard for addressing those assignments that would cause a reasonable person to question an employee's impartiality, either because the matter affects the financial interests of a member of the employee's household or because a person with whom the employee shares a particular personal or business relationship is a party to the matter. Proposed § 2635.502(b)(1) identifies as covered relationships to be taken into consideration for this purpose five categories of personal relationships. Questions of lack of impartiality tend to arise when employees participate in matters that affect the financial interests of those with whom they have relationships that fall within these five categories.

Matters such as general rulemaking and legislation tend to raise fewer concerns about an employee's impartiality than do matters to which there are specific parties and, thus, proposed § 2635.502 uses the concept of particular matters involving specific parties found in the post-employment statute, 18 U.S.C. 207, to pinpoint the most significant appearance problems. Notwithstanding the section's use of this concept and its focus on specified relationships, questions about an employee's impartiality can arise from any number of interests or relationships an employee might have and in connection with his or her participation in matters that do not necessarily involve specific parties. Proposed § 2635.502 therefore provides that an employee should use the process set forth in that section when circumstances other than those specifically described raise questions about his or her impartiality in the performance of official duties.

Under current 5 CFR 735.201a(d), employees have long been obligated to act impartially and to avoid even the appearance of loss of impartiality. However, they have not been provided a specific mechanism to resolve difficult issues of whether, in particular circumstances, a possible appearance of loss of impartiality is so significant that it should disqualify them from participation in particular matters. The proposed rule would provide employees with a means to ensure that their conduct will not be found, as a matter of hindsight, to have been improper. The disqualification procedures are similar to those proposed for dealing with disqualifying financial interests under subpart D.

In those cases that do not involve a financial interest that would be disqualifying as a matter of law under 18 U.S.C. 208(a), proposed § 2536.502(d) would place responsibility for the necessary authorization with the agency designee. As proposed, this section would require the agency designee to determine whether the Government's need for the employee's participation in a particular matter outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. The benefit of this procedure is twofold. Once the threshhold determination has been made by the employee, it allows the agency to determine whether a potential appearance problem is or is not so significant as to be disqualifying in a particular matter, and it relieves the employee of responsibility for the ultimate decision regarding the propriety of his involvement in a matter under circumstances where his judgment is likely to be questioned. It is intended to give the agency broad discretion, including the discretion to direct an employee's participation in a matter from which the employee has disqualified himself or herself on the basis of his or her assessment of the appearance implications. In explaining the relationship between proposed subpart E and proposed subparts D and F, the note following § 2635.501 states that a waiver granted under the authority of 18 U.S.C. 208(b) will always permit the employee's participation in a matter covered by that waiver.

Section 2635.502(b)(1)(i) excludes from consideration under the more flexible standards in 2635.502 an employee's participation in matters affecting the interest of a person with whom he or she is seeking employment. An employee who is seeking employment with a person affected by the performance of his official duties must comply instead with subpart F, Seeking Other Employment.

As proposed, § 2635.503 is a two-year disqualification requirement that applies to an employee who receives an extraordinary severance or other payment in excess of $10,000 from a former employer prior to entering Federal service. It does not apply to any payment, regardless of amount, made pursuant to the former employer's established compensation or benefits plan. For this purpose, the term former employer is broadly defined to include any person the employee served as an officer, director, trustee, partner, agent, attorney, consultant, contractor, or employee.

Prior to the holding of the Supreme Court in *Crandon* v. *U.S.*, 110 S. Ct. 997 (1990), an extraordinary payment of the type described in proposed § 2635.503 was thought to be precluded as an illegal supplementation of salary in violation of 18 U.S.C. 209. The Supreme Court held, however, that such payments received prior to entering on duty do not violate this statute. Nevertheless, an extraordinary payment from a former employer received prior to beginning Federal service raises a legitimate concern, and thus an appearance, that the employee may not act impartially in particular matters to which the former employer is a party or represents a party. The disqualification requirement that would be imposed by § 2635.503 is intended to address those appearance issues.

In the absence of a statutory waiver, an employee who retains a financial interest in a former employer, as through continued participation in its retirement plan, will be required by 18 U.S.C. 208(a) and proposed § 2635.402 of this part to disqualify himself or herself from particular matters affecting the former employer where the particular matters would thereby affect his or her own financial interest. Proposed § 2635.503 would not impact upon that obligation. Rather, it would impose an additional disqualification requirement, triggered by the receipt of an extraordinary payment, that applies regardless of whether the employee severed all financial ties with the former employer upon entering Federal service.

VII. Seeking Other Employment

Subpart F of the proposed rule contains a disqualification requirement applicable when an employee seeks employment with a person whose financial interests otherwise would be affected by performance or nonperformance of the employee's official duties. It implements the principle restated at § 2635.101(b)(10) of this proposed rule that an employee shall not engage in seeking or negotiating for employment that conflicts with his or her official Government duties and responsibilities.

The proposed subpart combines standards imposed by criminal statute with standards imposed by Executive Order 12674. In part, it implements 18 U.S.C. 208(a) which requires an employee's disqualification from participation in any particular matter affecting the financial interests of a person with whom he or she is negotiating or has any arrangement concerning prospective employment. Beyond this statutory requirement, it addresses the issues of lack of impartiality that require disqualification from any particular matter that affects the financial interests of a prospective

employer, even though the employee's actions to seek employment may fall short of actually negotiating for employment. Differences between the statutory and nonstatutory standards account for different waiver and authorization standards applicable depending upon whether the employee has or has not begun negotiating for employment.

The disqualification obligation applicable when seeking employment is set forth in proposed § 2635.604. It includes a requirement to take necessary steps to effect disqualification before beginning to seek employment if an employee wishes to initiate employment contacts with a person whose financial interests he or she knows will otherwise be directly affected by a particular matter to which he or she is assigned. Where the prospective employer initiates the contacts, or where an employee's assignment to a matter affecting the financial interests of a prospective employer occurs after the employee has begun seeking employment, disqualification must be accomplished in time to ensure that the employee does not participate in a matter affecting his or her prospective employer. At proposed § 2635.602, the note makes it clear that the subpart would impose no obligation upon an employee who is seeking employment with a person whose financial interests would not be affected by the performance or nonperformance of his or her official duties. That section also contains cross-references to pertinent regulations dealing with outside employment, post-employment, and interviews.

The proposed definition of the phrase seeking employment at § 2635.603(b) is fundamental to the structure of the subpart. It encompasses both the statutory concept of negotiating for employment and the concept found in the Executive order of conduct, short of negotiating, that constitutes seeking employment. The phrase prospective employer is generally defined at proposed § 2635.603(c) as any person with whom the employee is seeking employment. The proposed definition of employment at § 2635.603(a) makes it clear that the term encompasses contractual and other business relationships if they involve the provision of personal services by the employee. It also serves to exclude from the coverage of subpart F instances in which employment is sought with the Federal Government. Issues of lack of impartiality that may arise when an employee is seeking other Federal employment are to be addressed under subpart E, Impartiality in Performing Official Duties.

The phrase seeking employment is defined in terms of a beginning and ending point. Under the proposed definition at § 2635.603(b)(1), employment contacts initiated by the employee, as through the mailing of a resume, will mark the point at which the employee has begun seeking employment. For an employee, other than a special Government employee, the only exception is for a communication made for the sole purpose of requesting a job application. Where the initial employment contact is made by someone other than the employee, any response by an employee, other than rejection, will mark the point at which the employee has begun seeking employment. Although seeking employment will ordinarily have begun with an initial contact by the employee or the prospective employer, bilateral negotiations concerning prospective employment always constitute seeking employment. Based on case law interpreting 18 U.S.C. 208(a), the term negotiating is defined at proposed § 2635.603(b)(1) as any discussion or communication with another person mutually conducted with a view toward reaching an agreement regarding possible employment with that person. Any communication that might occur after an initial contact that constitutes seeking employment has taken place and before the onset of negotiations also constitutes seeking employment. The proposed definition of the term prospective employer at § 2635.603(c) includes standards intended to preclude an employee or a prospective employer from circumventing the requirements of subpart F by interposing an agent, such as an employment search firm, for the purpose of making employment contacts or conducting employment negotiations.

Under the proposed definition at § 2635.603(b)(2)(i), most employees who have begun seeking employment will no longer be seeking employment when either party rejects the employment possibility and all discussions of possible employment have terminated. Where the only employment contact consists of the employee's unilateral submission of an unsolicited resume or employment proposal, in the absence of a response from the recipient indicating an interest in employment discussions, proposed § 2635.603(b)(2)(ii) would treat the employee as nevertheless seeking employment for a period of 2 months from dispatch of the resume or proposal. Earlier communication of a rejection by the recipient of the resume or proposal would, at that time, terminate seeking employment with that particular prospective employer.

Under proposed § 2635.603(b)(1)(ii)(B), a special Government employee would not be deemed to have begun seeking employment with the recipient of his or her unsolicited resume or other employment proposal if the recipient's financial interests would be affected by the performance of the special Government employee's official duties only as part of an industry or other broadly-defined class. Under this exception, the special Government employee would be deemed to have begun seeking employment upon receipt of any response indicating an interest in discussion of the unsolicited resume or employment proposal and would, at that time, become subject to the disqualification requirement at proposed § 2635.604. This exception for unsolicited resumes and other employment proposals would not extend to unilateral efforts to obtain employment with a person affected uniquely or distinctly by performance of the special Government employee's official duties. The less restrictive standard for special Government employees is proposed in recognition of the fact that they serve the Government only on an intermittent or temporary basis and are expected to maintain other employment and business relationships.

The disqualification requirement imposed by proposed subpart F is not absolute. Where an employee is negotiating concerning prospective employment, proposed § 2635.605(a) provides that the employee's participation in a particular matter affecting the financial interests of his or her prospective employer may be permitted on the basis of a waiver granted under the explicit authority and standards contained in 18 U.S.C. 208(b). Where the employee has not yet begun to negotiate, proposed § 2635.605(b) would provide for use of the authority at § 2635.502(d) to permit participation in a matter from which the employee otherwise would be disqualified. This two-part authority is a necessary consequence of combining disqualification requirements that arise from a statute and from the ethical principles into a single subpart.

As with those disqualifications required by subpart D, Conflicting Financial Interests, and subpart E, Impartiality in Performing Official Duties, proposed § 2635.604 provides that disqualification required when seeking employment is accomplished by nonparticipation in the matter that

affects the prospective employer's financial interests. Under proposed § 2635.604(b), a written disqualification statement is not required unless requested by an agency ethics official or unless the employee is required to provide evidence of compliance with a recusal requirement imposed by an ethics agreement. However, the proposed regulations contain examples illustrating circumstances in which it may be prudent for an employee to reduce the fact of his or her disqualification to written form to create a record that he or she has acted properly. A written disqualification statement will not protect an employee who has in fact participated in a matter from which he or she is disqualified by subpart F.

Proposed § 2635.606(a) reflects the requirement of 18 U.S.C. 208(a) for an employee's disqualification throughout any period that the employee has an arrangement concerning future employment or while he or she is in fact employed. Proposed § 2635.606(b) is intended to give the agency flexibility to require an employee's disqualification from matters affecting a person with whom he or she has sought employment, even after employment negotiations have been terminated unsuccessfully, if there is reason to be concerned that the employee's participation may appear to be less than wholly impartial.

VIII. Misuse of Position

In subpart G, the proposed rule would consolidate four of the principles of ethical conduct that are directed at preventing misuse of public office. The prohibitions against use of public office for private gain, improper use of nonpublic information and misuse of Government property found in the principles of ethical conduct restated at proposed § 2635.101(b)(7), (b)(3) and (b)(9) of this part are similar to the prohibitions currently found respectively in 5 CFR 735.201a(a), 735.205 and 735.206. The fourth, relating to use of official time, implements the principle restated at proposed § 2635.101(b)(5) which requires employees to put forth honest effort in the performance of their duties.

Consistent with past interpretations of the current provision at 5 CFR 735.201a(a), proposed § 2635.702 would make it clear that the prohibition against use of public office for private gain is not limited in its application to cases in which the gain accrues to the employee personally, but extends to those cases in which the gain accrues to someone with whom the employee has a significant relationship. There are numerous situations in which questions of use of public office for private gain can arise. In the past, there has been little regulatory language interpreting this particular standard. Section 2635.702 (a) through (e), as proposed, provides standards that illustrate some of the more common situations in which issues of use of public office for private gain are likely to arise. Proposed § 2635.702(d), which serves primarily as a cross-reference to subpart E, points out that situations involving use of public office for private gain can arise in the performance of an employee's official duties as well as in connection with outside activities. As noted in the introductory language of the section, these standards are not intended to limit application of the broad principle that employees shall not use public office for private gain. In fact, many of the standards applicable to outside activities under subpart H of the proposed rule are derived from the principle that employees shall not use public office for private gain.

Proposed § 2635.703 prohibits the use of nonpublic information to further any private interest, whether the interest is the employee's own or that of another. To ensure that this prohibition does not interfere with the proper performance of an employee's official duties, the section also includes language limiting its application to "knowing" unauthorized disclosures. A disclosure that is inadvertent or made under a mistake as to the applicable law may violate another law governing its disclosure, but would not violate the standards of ethical conduct.

Under proposed § 2635.704, employees have a duty to protect and conserve Government property and may not use Government property or allow its use for other than authorized purposes. Under this section, the term Government property is defined broadly. Beyond the Government's ownership and leasehold interests in real and personal property, it extends to Government records as well as to any right or other intangible interest acquired with Government funds, including the right to direct the services of contractor personnel.

As proposed, § 2635.705 is a logical corollary to the preceding three sections. Consistent with the underlying principle restated at proposed § 2635.101(b)(5) of this part, this section provides that official time, whether the employee's own or that of subordinates, is to be used only in an honest effort to perform official duties. An employee who appropriately devotes his official time to the performance of his official duties does not violate the standards of ethical conduct because that performance is unsatisfactory. There are other remedies for dealing with inadequacies in employee performance. For employees not under a leave system, § 2635.705(a) would impose a duty to expend an honest effort and to devote a reasonable proportion of their time to the performance of their official duties.

IX. Outside Activities

Subpart H of the proposed rule contains standards that implement a number of provisions contained in Executive Order 12674, including the outside earned income prohibition applicable to Presidential appointees to full-time noncareer positions. In addition, it is intended to serve as a guide to ethics-related statutes or standards not contained in part 2635 that should be taken into account by an employee who wishes to engage in outside employment or other outside activities.

Proposed § 2635.801(b) is a listing of the more specific standards set forth in the subpart. Proposed § 2635.801(c) cautions employees that their outside activities also must comply with requirements set forth in other subparts of the proposed rule. For example, even though the obligation is not specifically restated in proposed subpart H, outside employment will require disqualification, under proposed subpart D, from participation in particular matters affecting the financial interests of an employer. And, in accordance with proposed subpart G, an employee may not use his or her official position, nonpublic information, Government property, or official time to perform or further outside activities.

As drafted, § 2635.801(c) also cautions employees that, in connection with their outside activities, they may need to consider statutes that are not implemented in proposed part 2635. The subsection contains brief synopses of the bribery, illegal gratuities, and supplementation of Federal salary statutes, and of the two representation statutes, contained in title 18 of the U.S. Code. Because of the frequency with which issues relating to political activities and employment by foreign governments arise, it also contains specific references to the Hatch Act and to the Emoluments Clause of the Constitution. In addition, it provides cross-references to regulations contained in 5 CFR part 2636 which implement the honorarium prohibition, and the outside employment restrictions applicable to certain noncareer employees. These portions of part 2636 are cross-referenced again in §§ 2635.807 and 2635.804 dealing

respectively with teaching, speaking and writing and with the outside earned income limitations applicable to certain noncareer employees.

Section 2635.802 is drafted specifically to implement the general principle restated at proposed § 2635.101(b)(10) that employees shall not engage in outside employment or activities that conflict with their official Government duties. It provides that an employee shall not engage in outside employment or any other outside activity that is prohibited by statute or by a supplemental agency regulation or that, by reason of the conflicting financial interest standards set forth in proposed subpart D or the impartiality standard in subpart E, would require disqualification from matters so central or critical to performance of the employee's official duties that the outside activity would impair the employee's ability to perform the duties of the position.

The principle underlying proposed § 2635.802 is similar to that now contained in 5 CFR 735.203(a) which includes examples of activities not compatible with the full and proper discharge of an employee's official duties. These include, as illustrations of incompatible activities, the acceptance of any item of monetary value under circumstances that would create an appearance of a conflict of interest and outside employment which tends to impair the employee's mental or physical capacity to perform his or her official duties. As a result of this formulation of the predecessor principle, the concept of incompatible activities has expanded so that any outside activity that involves a violation of any statutory or regulatory provision has come to be referred to as an incompatible activity.

As compared to existing § 735.203(a), the proposed rule narrows the concept of conflicting outside employment and activities. The consequence of this narrowing is not to sanction outside activities that result in or involve a violation of some other law or standard. Rather, the employee will be found to have violated that other law or standard. For example, proposed § 2635.807 contains provisions that prohibit the receipt of compensation for speaking where the invitation to engage in the activity has been extended to the employee because of his or her official position. An outside speaking activity for which an employee receives compensation in violation of this provision is treated, under proposed subpart H, as a violation of § 2635.807 and not as conflicting outside employment under § 2635.802. Similarly, an employee who uses agency photocopy equipment to reproduce a flier to advertise her tax preparation business has violated the provisions of proposed § 2635.704 relating to the use of Government property.

The proposed subpart does not itself prohibit any particular form of outside employment. Under proposed § 2635.403(a), an agency may issue a supplemental agency regulation that prohibits or restricts the acquisition or holding of a financial interest. Under the definition of the term financial interest at § 2635.403(c), an agency has authority to prohibit certain employment and other relationships if it determines that the existence of such relationships on the part of its employees would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. For example, the Internal Revenue Service could, by supplemental agency regulation, prohibit all employees from engaging in tax preparation for compensation. Pending the issuance of any such supplemental agency regulation, the note following proposed § 2635.403(a) would continue for one year any such agency prohibition now in effect.

In drafting the proposed regulations pertaining to outside employment and activities, OGE gave consideration to a requirement that all employees obtain advance approval to engage in outside employment. Although a number of agencies currently have requirements for advance approval, many do not. To ensure that it is not unnecessarily intrusive, any such regulation drafted for application to all executive branch employees would have to include so many exceptions and qualifications that it would be cumbersome to interpret and administer. In most cases, outside employment should be permitted unless, under the standards proposed in § 2635.802, it conflicts with performance of the employee's duties. Where outside employment involves a violation of some other provision of this part or a statute or regulation referenced in this part, that violation should be addressed. OGE determined that the disqualification obligation imposed on employees under proposed subparts D and E, coupled with requirements for financial disclosure, would serve to identify and address those employment relationships that are troublesome when considered in light of the employee's official responsibilities. Therefore, proposed § 2635.803 would permit agencies to impose requirements for prior approval for outside employment or activities by agency supplemental regulation. Pending the issuance of any such supplemental regulation, the note following that section would continue for one year any such agency requirement now in effect.

As drafted, § 2635.804(a) would implement section 102 of Executive Order 12674 which prohibits the receipt of outside earned income by full-time Presidential appointees to noncareer positions. Although more restrictive, this prohibition is similar to the 15 percent limitation on outside earned income applicable to certain noncareer employees under title VI of the Ethics Reform Act, which is implemented by OGE regulations at 5 CFR 2636.301 through 2636.304. For consistency, proposed § 2635.804(c)(1) would adopt the definition of outside earned income used for purposes of the 15 percent limitation under 5 CFR 2636.303(b).

Section 2635.805 is proposed as a logical extension of the statutory prohibitions on certain representational activities at 18 U.S.C. 203 and 205, both of which are referenced in proposed § 2635.801(c). Even when paid for by a party to the proceeding, service as an expert witness might not involve a representational act prohibited by either statute. Although such conduct may fall outside the scope of the criminal statutes, an employee should not place himself or herself in a position of serving as an expert witness, with or without compensation, for a party to a proceeding in which United States is a party or has a direct and substantial interest, unless authorized as in the interest of the Government. This is particularly egregious conduct when the employee's expertise relates to his or her official duties. In qualifying as an expert witness, the employee will be called upon to state his or her qualifications, including the fact of Federal employment. Where the fact of that employment tends to be persuasive, the employee's statement of his or her qualifications is likely to result in use of the employee's public office for the private gain of the party on whose behalf he or she is called to testify. Where compensation is received, that use of his or her public office may also result in the employee's personal gain.

The proposed prohibition at § 2635.805 applies differently to special Government employees in recognition of their particular status and of the fact that they frequently are employed by the Government because they possess a particular expertise. With two exceptions, special Government employees who serve 60 days or less in a period of 365 consecutive days would

be restricted from serving as expert witnesses only in particular matters in which they have participated personally and substantially, either as an employee or as a special Government employee. For those who serve more than 60 days, the restriction would extend also to those proceedings in which their employing agency is a party or has a direct and substantial interest. Regardless of the number of days they serve, certain special Government employees whose Federal positions give them particular stature would be restricted to the same extent as those who serve for more than 60 days. These would include special Government employees who are appointed by the President or who are commissioners on commissions established by statute.

Section 2635.805 is not proposed as a blanket prohibition. It allows for service as an expert witness when that service is in the interest of the Government. And it does not prohibit service as an expert witness when directed as part of the employee's duties under applicable agency housekeeping regulations. Moreover, nothing in the standards of ethical conduct prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

Proposed § 2635.806 is included by way of clarification for the many employees who are members of or serve as officers of professional associations. Where participation in the activities of such associations tends to ehance the skills and abilities they use in the course of Federal employment, there is a perception on the part of some employees that involvement in these activities is part and parcel of their Federal employment. Unless participation is specifically authorized as part of their official duties, it is not. These organizations are entities separate from the Federal Government. Under 18 U.S.C. 208(a) and the proposed standards at § 2635.402 of this part, those who serve as officers of professional and other organizations may not participate in their official governmental capacities in particular matters affecting the financial interests of the organizations. Further, as set forth in proposed subpart G, they may not use their Government positions, official time, nonpublic information, or Government property to fulfill their responsibilities with the private organization. Section 2635.806 would make it clear that such activities are personal, while at the same time reflecting the current practice, endorsed by the Office of Personnel Management for career development, of permitting employees to attend substantive programs or presentations offered by these organizations when their attendance is in the interest of the Government.

Section 2635.807(a) of the proposed rule contains a restriction on receipt of compensation for teaching, speaking, and writing that relates to the employee's official duties. As required by 18 U.S.C. 209, this section, by virtue of the definition in paragraph (a)(1)(i), prohibits receipt of compensation when the activity is performed as part of the employee's official duties. Based on the prohibitions against use of public office for private gain and misuse of nonpublic information, the definition also serves to prohibit receipt of compensation in cases where the invitation to engage in the teaching, speaking, or writing activity is extended because of the employee's official position or by a person whose interests are affected by performance or nonperformance of the employee's official duties, or when the information conveyed through such activity is nonpublic information.

The portion of the definition at proposed § 2635.807(a)(1)(i)(E) is less obvious and warrants additional comment. Under current 5 CFR 735.203(c), certain Presidential appointees have long been prohibited from receiving compensation for any "consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency." Because a standard of this nature is appropriate to ensure that public office is not used by any employee for private gain, proposed § 2635.807 would apply to all employees a similar standard that prohibits the receipt of compensation for teaching, speaking or writing where the subject matter focuses specifically on the employee's official duties or on the responsibilities, programs, or operations of the employee's agency. This is consistent in concept with the standards that have applied to outside speaking and writing under informal advisory opinions 84 x 5, cited above, and 85 x 18 issued October 28, 1985, as published in the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988).

For noncareer employees within the meaning of 5 CFR 2636.303(a), subject matter falls within the prohibition if it deals in significant part with the general subject matter area, industry, or economic sector affected by agency programs and operations. For special Government employees, there must be a specific relationship to their particular Government duties before the prohibition on receipt of compensation applies. For other employees, this definition contemplates a specific relationship between the subject matter and either their particular duties or the responsibilities, programs or operations of the employing agency. The compensation prohibition applies only where the activity deals in significant part with such matters. Thus, an employee would not be prohibited from receiving compensation for a speech that deals largely with other matters and touches only incidentally on agency responsibilities, programs or operations.

Even though the subject matter of the course focuses on agency responsibilities, programs or operation, and notwithstanding that his or her official position may contribute to the employee's attractiveness as a teacher of the particular course, § 2635.807(a)(2) would permit the receipt of compensation for teaching certain courses when sponsored and funded by a Federal, State or local government, or when offered as part of the regularly established curriculum of an institution of higher education or of an elementary or secondary school. This limited exception for teaching is similar to the exceptions to the honorarium prohibition carved out by the definition of the term honorarium at 5 CFR 2636.203(a) (8) and (9). It recognizes the contribution Federal employees can and should make to education in their fields of expertise under circumstances where there is little possibility that they or those who secure their teaching services will unfairly benefit from their government positions.

For purposes of § 2635.807, the proposed definition of the term "compensation" at paragraph (a)(1)(ii) is broader than either that included in the honorarium regulations at 5 CFR 2636.203(a) or the outside earned income provisions at 5 CFR 2636.303(b). It includes, for example, travel reimbursements that are excluded from the statutory definition of outside earned income contained in proposed § 2635.804. This distinction is intended. For example, when an employee's speech relates to his or her official duties, personal acceptance of transportation and hotel accommodations in connection with the speech is as inappropriate as is acceptance of an honorarium or any other form of compensation. There is specific authority, such as 5 U.S.C. 4111 and 31 U.S.C. 1353, under which an agency may accept or authorize acceptance of travel expenses in connection with activities, such as

speaking, that relate to the employee's official duties.

Consistent with OGE opinions, proposed § 2635.807(b) prohibits an employee who is engaged in outside teaching, speaking or writing in a personal capacity from using his or her official title or position, regardless of whether compensation is to be received for the activity. To the extent that it enhances the employee's opportunities or furthers the interests of the employer, sponsor or publisher, use of the employee's official title or position creates at least an appearance of use of public office for private gain and may inappropriately suggest Federal endorsement or sanction of the activity. The proposed regulation includes exceptions for appropriate reference to an employee's title or position as part of biographical information or, when coupled with an appropriate disclaimer, in connection with scholarly articles published in recognized scientific or professional journals. Proposed § 2635.807(c) requires employees to comply with any requirements for approval of content imposed by their agencies.

Proposed § 2635.808 sets forth standards designed to ensure that employees do not use their official positions to further the fundraising interests of any organization, unless specifically permitted by law or regulation. The fact that an entity is a charitable organization does not warrant a departure from the principle that an employee shall not use his or her public office to further a private interest. This issue is most likely to arise when the employee holds a position of high visibility, such as a cabinet-level office. Officials who hold these positions often receive requests to serve as sponsors for or to host fundraising events for nonprofit organizations. Because they cannot honor every such request, their decisions to host or otherwise participate in particular events are likely to result in the appearance of preferential treatment for those whose invitations they accept. Section 2535.808(c)(2) would prohibit officials who serve in Executive Level I and II positions, and certain White House personnel paid at Executive Level II, from engaging in fundraising activities, even in a personal capacity, unless they engaged in fundraising for the particular entity prior to appointment to a covered Government position or are personally and actively involved in the affairs of the organization. Even when those conditions are met, high-level officials covered by proposed § 2635.808(c)(2) would nevertheless be required to comply with the conditions that would be imposed by proposed § 2635.808(c)(1) upon all employees wishing to engage in fundraising in their personal capacities.

Subject to the special rules imposed on very senior officials, employees would be free, under proposed § 2635.808(c)(1), to engage in fundraising in a personal capacity provided they do not personally solicit funds or other support from subordinates or prohibited sources, use their official title, position or authority in connection with fundraising, or engage in other prohibited conduct, such as use of Government property or time to further the fundraising activity. Fundraising in an official capacity is limited by § 2635.808(b) to activities such as the Combined Federal Campaign that are specifically permitted by statute, executive order or regulation. The proposed definitions at § 2635.808 (a)(2) and (a)(3) would ensure that employees may continue to speak in an official capacity at appropriate events even though a particular event may also serve a fundraising purpose. The content of any such speech must relate to the employee's official duties and the employee may not, in the course of the speech or otherwise at the event, solicit donations or other support for the organization.

Proposed § 2635.809 implements the principle restated at § 2635.101(b)(12) of this proposed rule that employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those imposed by law, such as Federal, State and local taxes. The proposed implementation is similar to the current rule at 5 CFR 735.207.

X. Revocation by OPM of Superseded Portions of 5 CFR Part 735 and by OGE of Current 5 CFR 2635.101

When, following notice and comment, the proposed rule is issued as a final rule and takes effect, § 2635.101 will be superseded by the Office of Government Ethics' new 5 CFR part 2635. At that time, the Office of Personnel Management will simultaneously revoke all but § 735.106 of subparts A through C of current part 735 of 5 CFR and will issue a regulation addressing the prohibitions relating to gambling, betting, and lotteries currently found at 5 CFR 735.208.

XI. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before September 20, 1991. The comments will be carefully considered and any appropriate changes will be made to the regulation as proposed before a final rule is adopted and published by OGE in the **Federal Register.**

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive Branch Standards of Conduct, Government employees.

Approved: July 16, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble and pursuant to its authorities under the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, and under Executive Order 12674, as modified by E.O. 12731, the Office of Government Ethics proposes to amend title 5, chapter XVI, subchapter B of the Code of Federal Regulations by revising part 2635 to read as follows:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A—General Provisions

Sec.

2635.101 Basic obligation of public service.
2635.102 Definitions.
2635.103 Applicability to members of the uniformed services.
2635.104 Applicability to employees on detail or serving overseas.
2635.105 Supplemental agency regulations.
2635.106 Disciplinary and corrective action.
2635.107 Ethics advice.

Subpart B—Gifts from Outside Sources

Sec.
2635.201 Overview.
2635.202 General Standards.
2635.203 Definitions.
2635.204 Exceptions.
2635.205 Proper disposition of prohibited gifts.

Subpart C—Gifts between Employees

2635.301 Overview.
2635.302 General standards.
2635.303 Definitions.
2635.304 Exceptions.

Subpart D—Conflicting Financial Interests

2635.401 Overview.
2635.402 Disqualifying financial interests.
2635.403 Prohibited financial interests.

Subpart E—Impartiality in Performing Official Duties

2635.501 Overview.
2635.502 Personal and business relationships.
2635.503 Extraordinary payments from former employers.

Subpart F—Seeking Other Employment

2635.601 Overview.
2635.602 Applicability and related considerations.
2635.603 Definitions.
2635.604 Disqualification while seeking employment.
2635.605 Waiver or authorization permitting participation while seeking employment.
2635.606 Disqualification upon conclusion of employment negotiations.

Subpart G—Misuse of Position

2635.701 Overview.
2635.702 Use of public office for private gain.
2635.703 Use of nonpublic information.
2635.704 Use of Government property.
2635.705 Use of official time.

Subpart H—Outside Activities

2635.801 Overview.
2635.802 Conflicting outside employment and activities.
2635.803 Prior approval for outside employment and activities.
2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.
2635.805 Service as an expert witness.
2635.806 Participation in professional associations.
2635.807 Teaching, speaking, and writing.
2635.808 Fundraising activities.
2635.809 Just financial obligations.

Subpart I—Related Statutory Authorities

2635.901 General.
2635.902 Related statutes.

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App.; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2635.101 Basic obligation of public service.

(a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) *General principles.* The following general principles form the basis for the standards contained in this part.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(c) *Related statutes.* In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

§ 2635.102 Definitions.

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) *Agency* means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) *Agency designee* refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted with respect to another

employee by this part. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) *Agency ethics official* refers to the designated agency ethics official or the alternate designated agency ethics official and to any deputy ethics official, described in § 2638.204 of this subchapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) *Agency programs or operations* refers to any program or function carried out or performed by an agency, whether pursuant to statute, executive order, or regulation.

(e) *Corrective action* includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, recusal, divestiture, termination of an activity, waiver, the creation of a qualified or diversified blind trust, or counseling.

(f) *Designated agency ethics official* refers to the official designated under § 2638.201 of this subchapter.

(g) *Disciplinary action* includes those disciplinary actions provided for by Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal.

(h) *Employee* means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) *Head of an agency* means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) *He, his,* and *him* include she, hers and her.

(k) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 25 percent or more of the subsidiary's equity or otherwise controls the management or policies of the subsidiary. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) *Supplemental agency regulation* means a regulation issued pursuant to § 2635.105 of this subpart.

§ 2635.103 Applicability to members of the uniformed services.

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

§ 2635.104 Applicability to employees on detail or serving overseas.

(a) *Details to other Federal entities.* An employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 days shall be subject to any supplemental agency regulation of the agency to which he is detailed rather than to any supplemental agency regulation of his employing agency. An employee detailed to the legislative or judicial branch for a period in excess of 30 days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail to the legislative or judicial branch, the employee remains subject to the conflict of interest statutes in title 18 of the United States Code, but shall not be subject to the provisions of this part, except this section, or to any supplemental agency regulation of his employing agency.

(b) *Details to non-Federal entities.* Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a nonFederal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(c) *Assignments overseas.* (1) An employee serving overseas who is subject to the direction, coordination and supervision of the chief of mission shall be subject to the supplemental agency regulations of the Department of State rather than to any supplemental agency regulations of his employing agency if it is other than the Department of State.

(2) An employee serving overseas who is subject to the command of the United States area military commander shall be subject to the supplemental agency regulations of the Department of Defense rather than to any supplemental agency regulations of his employing agency if it is other than the Department of Defense.

(3) Any employee, other than an employee described in paragraphs (c) (1) and (2) of this section, who is assigned to perform duty overseas shall remain subject to any supplemental agency regulations of his employing agency.

§ 2635.105 Supplemental agency regulations.

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

(1) In the form of an addendum to the regulations in this part; and

(2) In addition to the substantive provisions of this part.

(b) After concurrence by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the **Federal Register** for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the **Federal Register**.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

(1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations;

(2) An instruction or other issuance the purpose of which is to:

(i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or

(ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

§ 2635.106 Disciplinary and corrective action.

(a) Except as provided in § 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action which may be in addition to any penalty prescribed by law. Officers of the uniformed services shall continue to be subject to the Uniform Code of Military Justice for a violation of this part or of supplemental agency regulations.

(b) It is the responsibility of the employing agency to initiate disciplinary or corrective action in appropriate cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this subchapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

§ 2635.107 Ethics advice.

(a) As required by § 2638.201 of this subchapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program. The designated agency ethics official has authority under § 2638.204 of this subchapter to delegate certain responsibilities, including that of providing ethics counseling, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in compliance with the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege.

Subpart B—Gifts From Outside Sources

§ 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.202 General standards.

(a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

(1) From a prohibited source; or

(2) Given because of the employee's official position.

(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than § 2635.204(h), an employee shall not:

(1) Accept a gift in return for being influenced in the performance of an official act;

(2) Coerce the offering of a gift;

(3) Accept a gift from a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the employee's impartiality in the matter affecting that person;

Example 1: An employee of the Department of Housing and Urban Development is an appraiser inspecting a building to determine whether HUD will insure a mortgage loan made by a private lender. She should decline the building owner's offer of a bottle of wine. Even though its market value is less than $25 and, thus, within the exception at § 2635.204(a) of this subpart for gifts of $25 or less, acceptance of the gift offered in conjunction with the inspection would cause a reasonable person to question the

employee's impartiality in carrying out her inspectional duties. On the other hand, the appraiser's acceptance of the customary courtesy of a cup of coffee and a donut would be proper.

(4) Accept gifts from the same or different sources on a basis so frequent as to raise an appearance of use of public office for private gain; or

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent on one occasion offered to meet with a representative during his lunch hour and the representative arrived at the employee's office bringing a pastrami sandwich and a soft drink so that the employee would not miss lunch. At the end of the meeting the representative stated that he would like to set up lunch meetings on a monthly basis for which he would provide the meal. Even though the market value of each of the lunches to be provided would be less than $6 and, thus, well within the exception at § 2635.204(a) of this subpart for gifts of $25 or less, the purchasing agent should decline since his acceptance of these modest gifts on a recurring basis would be so frequent as to raise an appearance that he used his position to subsidize his lunches.

(5) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes special Government employees as well as all other Government officials.

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality.

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in subpart 3.104 of the Federal Acquisition Regulation.

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Agency* has the meaning set forth in § 2635.102(a) of this part. However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions. No such designation shall be effective as to the head of any such separate agency or as to department-level employees.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

It does not include:

(1) Loans from banks and other financial institutions on terms generally available to the public;

(2) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(3) Rewards and prizes given to competitors in contests or events, including random drawings, which are unrelated to the employee's official duties and open to the public or to a broadly defined class;

(4) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies which are intended solely for presentation;

(5) Anything which is paid for by the Government or secured by the Government under Government contract;

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-1.6(b).

(6) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(7) Anything for which market value is paid by the employee.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about $20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only $20, the market value of the ticket is its $250 face value.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) of this subpart or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this subchapter.

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) of this subpart do not apply to a gift accepted under the circumstances described in paragraphs (a) through (j) of this section.

(a) *Gifts of $25 or less.* An employee may accept unsolicited gifts having an aggregate market value of $25 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed $100 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds $25, the employee may not pay the excess value over $25 in order to accept that portion of the gift or those gifts worth $25. Where the aggregate value of tangible items offered on a single occasion exceeds $25, the employee may decline any distinct and separate item in order to accept those items aggregating $25 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of $30. The aggregate market value of the gifts offered on this single occasion is $60, $35 more than the $25 amount that may be accepted for a single event or presentation. The employee may not accept the evening of entertainment. He and his spouse may attend the play only if he pays the full $60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technolgy. At the conclusion of his speech, the association presents the employee a framed map with a market value of $18 and a book about the history of cartography with a market value of $20. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds $25.

Example 3: An employee of the Department of the Army is serving as a member of a team evaluating a claim submitted by an Army contractor under its contract to supply 20,000 portable generators. Just as the team is about to make its recommendation regarding the amount for which the Army should settle the claim, the contractor sends the employee a golf shirt worth $25. Although the market value of the shirt does not exceed $25, the employee should not accept the gift because of the limitation in § 2635.202(c)(3) of this subpart. The timing and nature of the gift are such that the employee's acceptance would cause a reasonable person to question the employee's impartiality in carrying out his duties as a member of the claims evaluation team.

Example 4: The Army's plant representative assigned to duty at a facility operated by an Army contractor may accept the contractor's gift of a magazine subscription worth $20.

Example 5: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth $10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly $100 limitation on gifts of $25 or less from any one person, the four gifts must be aggregated because a *person* is defined at § 2635.102(k) of this part to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the $100 limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, since he can accept the birthday present under the exception at § 2635.204(b) of this subpart for gifts based on a personal relationship.

Example 6: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of $25 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain nonFederal sources in connection with its employees' attendance at such functions, a gift of $25 or less accepted under § 2635.204(a) of this subpart is a gift to the employee rather than to his employing agency.

(b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry free is $500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) *Discounts and similar benefits.* An employee may accept unsolicited opportunities and benefits, including favorable rates and commercial discounts, offered to a limited class of persons if the offer is extended:

(1) By a person who is not a prohibited source: and

(2) To a class that is not defined in a manner that specifically discriminates among Government employees on the basis of employment rank, rate of pay, or type of official responsibility.

Example 1: An employee of the U.S. Information Agency may accept a discount of $100 on a set of four tires offered by a local merchant to all members of an agency credit union. The merchant is not a prohibited source and the discount is offered because she is a member of the credit union, to which any employee of the agency can belong.

Example 2: An Assistant Secretary may not accept a local country club's offer to all members of Department Secretariats which includes a waiver of its $5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer, extended because of the employee's official position and targeted to a narrow class of Federal employees, discriminates on the basis of rank.

(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other

than cash or an investment interest, with an aggregate market value of $200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Other gifts offered by such persons as awards or incidents of awards that are given for these purposes, including awards of cash or investment interests, may be accepted upon a written determination by an agency ethics official that the award meets the following criteria:

(i) The award is made as part of an established program of recognition under which awards are made on a periodic basis. An established program is one under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis;

(ii) Individuals other than Federal employees are eligible for the award; and

(iii) Selection of the award recipient is made pursuant to specific written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that acceptance will not create an appearance of loss of impartiality or use of public office for private gain.

(3) An employee who may accept an award, honorary degree, or personal tribute pursuant to paragraphs (d) (1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1) of this subpart, an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that her acceptance will not create an appearance of loss of impartiality or use of public office for private gain.

Example 3: A Department of State official selected by a nonprofit organization as recipient of its award for distinguished service in the interest of world peace may, together with his mother, wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth $200 presented during the ceremony.

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation, and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502 of this part, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting, if he is a special Government employee, from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a $50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting the communications industry wishes to apply for a job opening with a television network. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the network and accept the network's offer to pay for her airfare, hotel, and meals in connection with an interview trip.

(f) *Gifts from a political organization.* An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an exempt employee to a political event may accept meals, free attendance, and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) *Speaking engagements and widely-attended gatherings.* (1) When an employee's participation in all or part of an event is determined to be in the interest of the employing agency because it will further agency programs or operations, an employer may accept an unsolicited gift of free attendance at all or appropriate parts of the event provided by the sponsor of:

(i) An event in which the employee is to participate as a speaker or panel participant; or

(ii) A widely-attended gathering concerning a subject of mutual interest to a number of parties that the employee will attend on his own time. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent various sectors of the economy.

(2) *Determination of agency interest.* The official assignment of an employee to participate as a speaker or panel member shall constitute the necessary determination that it is in the agency's interest of the employee to participate in any part of the event that takes place on the day he will speak or serve on the panel and that involves the presentation or exchange of information. In all other cases, the determination of agency interest shall be made in writing by the agency designee. If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or an association or organization the majority

of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may reasonably appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants, and the monetary value of the gift of free attendance.

(3) *Free attendance.* For purposes of paragraph (g)(1) of this section, a gift of free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction, and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

(4) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring association or other organization does not constitute a payment intended to facilitate a particular employee's attendance.

(5) *Accompanying spouse.* When an employee is a speaker or panel participant or when his participation in an event is determined by the agency designee to be in the interest of the agency, the agency designee may authorize attendance by an accompanying spouse at all or part of the event based on a determination that others in attendance at the event will generally be accompanied by spouses.

Example 1: An aerospace industry association that is a prohibited source sponsors a seminar for which it charges a fee of $100. An Air Force contractor pays $500 to the association so that the association can extend free invitations to 5 Air Force officials designated by the contractor. The Air Force officials may not attend. Because the contractor specified the invitees and bears the cost of their attendance, the gift of free attendance is considered to be provided by the company and not the sponsoring association. Had the contractor paid $500 to the association in order that it might invite any 5 Federal employees, an Air Force official to whom the sponsoring association has extended one of the 5 invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a 1-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a) of this subpart, he may accept a token of appreciation for his speech having a market value of $25 or less.

Example 3: An employee of the Department of the Interior authorized to speak on the first day of a 4-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. However, he may be authorized to accept the sponsor's waiver of the conference fee for any of the 3 remaining days of the conference, and to use official time to attend, only if his participation in the activities to take place on those days is determined by the agency designee to be in the interest of the agency.

(h) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate §§ 2635.202(c) (1) or (2) of this subpart, 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(i) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(j) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3). The employee's acceptance must be approved by the agency in accordance with §§ 410.701 through 410.706 of this title; or

Note: Section 501(c)(3) of title 26 of the United States Code is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations implementing that Act.

§ 2635.205 Proper disposition of prohibited gifts.

(a) an employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 2635.203(c) of this subpart.

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth $200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor $200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a $300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g) of this subpart, he may attend if he reimburses the donor the $300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41

CFR part 101–49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101–25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who returns the gift upon the advice of the ethics official will be considered to have complied with the requirements of this section on his own initiative.

Subpart C—Gifts Between Employees

§ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.302 General standards.

(a) *Gifts to superiors.* Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) *Gifts from employees receiving less pay.* Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart the following definitions shall apply:

(a) *Gift* has the meaning set forth in § 2635.203(b) of this part. For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) *Indirectly,* for purposes of § 2635.302(b) of this subpart, has the meaning set forth in § 2635.203(f) of this part. For purposes of § 2635.302(a) of this subpart, it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, *market value* has the meaning set forth in § 2635.203(c) of this part.

(d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) *Solicit* means to request contributions by personal communication or by general announcement.

(f) *Voluntary contribution* means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception, or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a luncheon, reception, or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who chose to participate in the farewell lunch is voluntary.

§ 2635.304 Exceptions.

The prohibitions set forth in § 2635.302 (a) and (b) of this subpart do not apply to a gift given or accepted under the circumstances described in paragraphs (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302 (a) and (b) of this subpart may only be made in accordance with paragraph (c) of this section.

(a) *General exceptions.* On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items with an aggregate market value of $10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence;

(4) Items given in connection with the receipt of personal hospitality if of a type customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title, unless obtained in violation of § 630.912 of that subpart.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for $6.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than $5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of $10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for $10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) *Special, infrequent occasions.* A gift appropriate to the occasion may be

given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a $30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for $70.

(c) *Voluntary contributions.* An employee may solicit voluntary contributions of nominal amounts from fellow employees for a gift to an official superior and an employee may make a voluntary contribution of a nominal amount to a gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Because Christmas occurs annually, it is not an infrequently occurring occasion of personal significance.

Example 3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b) of this subpart. However, subordinates may take up a collection and employees may contribute $3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute $5 for the gift. Her method of collection is improper. Although she may recommend a $5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

Subpart D—Conflicting Financial Interests

§ 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403 of this subpart. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

§ 2635.402 Disqualifying financial interests.

(a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver, as described in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Direct and predictable effect.* (i) A particular matter will have a *direct* effect on a financial interest for purposes of this subpart if there is a close causal link between any decision or action to be taken in the matter and any expected effect on the financial interest. An effect may be direct even though it does not occur immediately. A matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A matter will have a *predictable* effect for purposes of this subpart if there is a real, as opposed to a slight or speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known.

Note: If a particular matter involves a specific party or parties, the matter will generally only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on the employee's stock in another company listed as a subcontractor in the proposal of one of the competing offerors.

(2) *Imputed interests.* For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons are treated as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

(3) *Particular matter.* The term *particular matter* encompasses only

matters that involve deliberation, decision, or action that is focused upon the interests or specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even though it does not involve formal parties and may include governmental action such as legislation or policy making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term *particular matter*, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or arrest.

(4) *Personal and substantial.* To participate *personally* means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate *substantially* means that the employee's involvement is of material significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter.

(c) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, the employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

(1) *Documentation of disqualification.* Disqualification is accomplished by not participating in the particular matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(2) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the disqualifying financial interest in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

Example 1: A newly wed Army employee is negotiating an on-going procurement of amphibious landing equipment. He has just learned that his bride is the beneficiary of a family trust that holds 100 shares of stock in one for the offerors. Because this financial interest of his spouse is imputed to him for purposes of 18 U.S.C. 208(a), he cannot continue to participate in the procurement. Because he has already participated in the matter, the employee may wish to file a written disqualification statement with the person who assigned him to the procurement in order to create a written record that he withdrew from participation immediately upon learning of his imputed financial interest in the matter.

Example 2: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary may, as a matter of prudence, wish to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) *Waiver of disqualification.* An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) *Regulatory waivers.* Under 18 U.S.C. 208(b)(2), regulatory waivers of general applicability may be issued by the Office of Government Ethics based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of the employees to whom the waiver apply. Pending issuance of superseding regulatory waivers under this authority, agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989, continue to apply.

(2) *Individual waivers.* An individual waiver enabling the employee to participate in a particular matter may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from each employee.

(3) *Federal advisory committee member waivers.* An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the disqualifying financial interest.

When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraphs (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) *Voluntary divestiture.* An employee who would otherwise be

disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this subpart, or if the agency determines in accordance with § 2635.403(b) of this subpart that a substantial conflict exists between the financial interest and the employee's duties or accomplishments of the agency's mission.

An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this subchapter. An employee who voluntarily divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should, as a matter of prudence, advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

§ 2635.403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

Note: There is no statute of Government-wide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes.

(a) *Agency regulation prohibiting certain financial interests.* An agency may, by supplemental agency regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered.

Note: Any prohibition on acquiring or holding a specific financial interest contained in an agency regulation, instruction or other issuance in effect prior to the effective date of this part shall, for employees of that agency, constitute a prohibited financial interest for purposes of this paragraph for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

(b) *Agency determination of substantial conflict.* An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. Because engineering and other decisions about the Air Force's requirements for the fighter necessarily impact upon the nation's several engine manufacturers, the employee could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position.

(c) *Definition of financial interest.* (1) Except as provided in paragraph (c)(2) of this section, the term *financial interest* is limited to financial interests that are owned by the employee or that are both imputed to the employee under § 2635.402(b)(2) of this subpart and controlled by the employee. However, the term is not limited to only those financial interests that would be disqualifying under 18 U.S.C. 208(a) and § 2635.402 of this subpart. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

Example 1: A regulatory agency wishes to issue a supplemental agency regulation to prohibit employees from acquiring stock or bonds in regulated entities. Because an employee will generally not control his spouse's independent investments, the agency may not prohibit the independent acquisition of such stock or bonds by an employee's spouse. However, because a spouse's financial interests are imputed to the employee under 18 U.S.C. 208(a), a spouse's holding of stock in a regulated entity may result in the employee's disqualification from particular duties or other appropriate administrative remedies.

(2) The term *financial interest* includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv) or this subpart.

Example 1: Because the Foundation for Preservation of Wild Horses routinely comments on all rulemaking affecting the use of Federal grasslands, the Bureau of Land Management may require that an employee resign from his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position with the Bureau.

(d) *Reasonable period to divest or terminate.* Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this subchapter.

Subpart E—Impartiality in Performing Official Duties

§ 2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an

employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502 of this subpart, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 of this subpart to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503 of this subpart, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

Note: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter on which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver, as described respectively in §§ 2635.402(d) and 2635.605(a) of this part, will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) of this subpart may not be used to authorize an employee's participation in any such matter. The granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 2635.502 Personal and business relationships.

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or that a person with whom he has a covered relationship is or represents a party to such matter, and where the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c) of this part, with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

Note: An employee who is seeking employment within the meaning of § 2635.603 of this part shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

(2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1) of this part.

(3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this subchapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of 5 or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. The employee should readily conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her

impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee should, at the agency designee's discretion, be documented in writing. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The Director must appoint another person to replace the Deputy Director on the selection panel. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402 of this part.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality.

(1) *Documentation of disqualification.* Disqualification is accomplished by not participating in the matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(2) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the relationship that gives rise to the obligation of disqualification in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter or to give or seek authorization to permit the employee's participation pursuant to paragraph (d) of this section. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee

or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 Extraordinary payments from former employers.

(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. She may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Extraordinary payment* means any item, including cash or an investment interest, with a value in excess of $10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: Upon being nominated for a position as an ambassador, the vice president of a small corporation announced his intention to resign his vice presidency upon confirmation. Upon his resignation, the corporation voted to give him a gratuitous payment of $50,000, in recognition of his service as a corporate officer, in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of $50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F—Seeking Other Employment

§ 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons who otherwise would be affected by the performance or nonperformance of the employees' official duties. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

§ 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b) of this part, an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of §§ 2635.604 and 2635.606 of this subpart if the employee's official duties would affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

Note: An employee who is seeking employment with a person whose financial interests are not affected by the performance of nonperformance of his official duties has no obligation under this subpart. An employee may, however, be subject to other statutes which impose restrictions on employment contacts or discussions, such as 41 U.S.C. 423(b)(1), applicable to procurement officials, and 10 U.S.C. 2397a, applicable to certain employees of the Department of Defense.

(a) *Related employment restrictions*—(1) *Outside employment while a Federal employee.* An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D of this part as a result of his outside employment activities.

(2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Government-wide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this subchapter. Employees are cautioned that they may be subject to additional statutory restrictions on their post-employment activities.

(b) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) of this part offers to reimburse an employee's travel expenses, or provide other reasonable amenities, incident to employment discussions, the employee may accept such amenities only in accordance with the gift standards in subpart B of this part.

§ 2635.603 Definitions.

For purposes of this subpart:

(a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, consultant, general partner, or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is *seeking employment* once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term *negotiations* means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) By a special Government employee for the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The special Government employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has begun seeking employment with all twenty-five. If he does not receive a response from any of the resume recipients indicating an interest in employment discussions, the employee will be seeking employment with each resume recipient for 2 months from the date the particular resume was dispatched. However, if he withdraws his application from any recipient or if he is notified within the 2-month period that his resume has been rejected by that recipient, he will no longer be seeking employment with that particular person as of the date he makes such withdrawal or receives such notification.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation assisting in drafting rules applicable to all member banks mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

(c) *Prospective employer* means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) *Direct and predictable effect* and *particular matter* have the respective meanings set forth in § 2635.402(b) (1) and (3) of this part.

§ 2635.604 Disqualification while seeking employment.

(a) *Obligation to disqualify.* Unless the employee's participation is authorized in accordance with § 2635.605 of this subpart, the employee shall not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is negotiating for employment within the meaning of § 2635.603(b) of this subpart. An employee who wishes to initiate employment contacts with a person whose financial interests he knows will be directly affected by a particular matter to which he is assigned shall take steps necessary to effect such disqualification before beginning to seek employment with that person.

(b) *Documentation of disqualification.* Disqualification is accomplished by not participating in the particular matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(c) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the disqualifying financial interest in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

Example 1: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he will have to disclose his intentions to his supervisor in order to have his work assignment changed.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is actively involved in formulating recommendations to improve particular testing procedures that would directly affect the company. Before making a response that is not a rejection, the employee should disqualify himself from further participation in formulating testing procedures. Where he has authority to ask his colleague to assume his responsibility in the matter, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he may, as a matter of prudence, wish to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official to file a written disqualification statement.

Example 4: A scientist is employed by the National Science foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) *Agency determination of substantial conflict.* Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow or direct the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) *Waiver.* Where, as defined in § 2635.603(b)(1)(i) of this subpart, an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in § 2635.402(d) of this part.

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i) of this subpart. In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) *Authorization by agency designee.* Where an employee is seeking employment within the meaning of § 2635.603(b)(1) (ii) or (iii) of this subpart, a reasonable person would be likely to question his impartiality if he were to participate in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in § 2635.502(d) of this part.

Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii) of this subpart even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

§ 2635.606 Disqualification upon conclusion of employment negotiations.

(a) *Offer accepted.* An employee who has sought and accepted employment shall be disqualified from taking official action in a particular matter that has a direct and predictable effect on the financial interests of the person by

whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3). These waivers are described in § 2635.402(d) of this part.

Example 1: A military officer has accepted a job with a defense contractor to begin in 6 months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

(b) *Offer rejected or not made.* The agency designee for the purpose of § 2635.502(c) of this part may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all relevant factors, including those listed in § 2635.502(d) of this part, and a determination that the concern that a reasonable person may question the integrity of the agency's decisionmaking process outweighs the Government's interest in the employee's participation in the matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially if the matter outweighs the Government's interest in her participation.

Subpart G—Misuse of Position

§ 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

(a) Use of public office for private gain;

(b) Use of nonpublic information;

(c) Use of Government property; and

(d) Use of official time.

§ 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general principle, but are not intended to be exclusive or to limit the application of this section.

(a) *Inducement or coercion of benefits.* An employee shall not use or permit the use of his Government position or title or any authority with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, also violated 18 U.S.C. 205.

(b) *Appearance of governmental sanction.* Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b) of this part. He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

(c) *Endorsements.* Except in furtherance of statutory authority to promote products, services or enterprises, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service, or enterprise.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procuring from the United States company.

Example 3: An employee of the National Aeronautics and Space Administration who works on weekends as an automobile salesman cannot be featured in a television commercial that advertises the opportunity to buy a car from a "real astronaut."

(d) *Performance of official duties affecting a private interest.* To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of

certain persons with whom he has significant relationships shall comply with any applicable requirements of § 2635.502 of this part.

(e) *Use of ranks and terms of address.* Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

§ 2635.703 Use of nonpublic information.

(a) *Prohibition.* An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice, recommendation, or by knowing unauthorized disclosure.

(b) *Definition of nonpublic information.* For purposes of this section, *nonpublic information* is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute or executive order;

(2) Is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate insider trading laws as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. Parts 3, 14 and 15 of the Federal Acquisition Regulation restrict the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

§ 2635.704 Use of Government property.

(a) *Standard.* An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) *Definitions.* For purposes of this section:

(1) *Government property* includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) *Authorized purposes* are only those purposes authorized by law or regulation for the performance of official duty. In the absence of such authority, an employee's use of Government property for any purpose unrelated to the performance of his official duties is improper. However, on his own time, provided such use does not inconvenience the agency, an employee:

(i) May occasionally use microfiche and printed library and general reference materials; and

(ii) May be authorized by his supervisor to use microfiche and printed library and general reference materials and word processing equipment for purposes of professional development where there is a negligible cost to the Government.

Example 1: Under regulations of the General Services Administration at 41 CFR 201-38.007-1, an employee may use the Government telephones to make a brief local call to her daughter's day care center or to make a commercial long distance call charged to her personal calling card.

Example 2: An employee of the Defense Contract Audit Agency is taking a night course on cost accounting as part of a masters degree program. She may be authorized by the supervisor to use the agency's library and her office word processor during nonduty hours to research and write a paper required for the course.

Example 3: An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.

§ 2634.705 Use of Official Time.

(a) *Use of an employee's own time.* An employee shall not use official time other than in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

(b) *Use of a subordinate's time.* An employee shall not direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties.

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during nonduty hours constitutes an improper use of public office for private gain in violation of § 2635.702(a) or this subpart. Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time.

Subpart H—Outside Activities

§ 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;

(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of employees must also comply with applicable requirements set forth in other subparts of this part and with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty.

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act.

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity of the United States. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction.

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity of the United States, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions.

(5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability.

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits an employee from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any employee from acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 *et seq.*

(7) The Hatch Act, 5 U.S.C. 7321 through 7328, which prohibits most employees from engaging in certain partisan political activities.

(8) The honorarium prohibition, 5 U.S.C. App., which prohibits an employee, other than a special Government employee, from receiving any compensation for an appearance, speech or article. Implementing regulations are contained in §§ 2636.201 through 2636.205 of this subchapter.

(9) The limitations on outside employment, 5 U.S.C. App., which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this subchapter.

§ 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in §§ 2635.402 and 2635.502 of this part, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may nevertheless require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

§ 2635.803 Prior approval for outside employment and activities.

Where required by agency supplemental regulation, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is desirable for the purpose of administering its ethics program, an agency may, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in any or specific types of outside employment or activities.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) *Presidential appointees to full-time noncareer positions.* A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) *Covered noncareer employees.* Covered noncareer employees, as defined in § 2636.303(a) of this subchapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive

Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in §§ 2636.301 through 2636.304 of this subchapter.

Note: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this subchapter.

(c) *Definitions.* For purpose of this section:

(1) *Outside earned income* has the meaning set forth in § 2636.303(b) of this subchapter, except that paragraph (b)(8) of that section shall not apply.

(2) *Presidential appointee to a full-time noncareer position* means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by presidential appointment, other than:

(i) A position filed under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is less than that for GS–9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position held by a member of the foreign service which does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policymaking position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a presidential appointee to a full-time noncareer position.

§ 2635.805 Service as an expert witness.

(a) *Restriction.* An employee shall not serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section as in the interest of the Government. Except as provided in paragraph (b) of this section, this restriction shall only apply to a special Government employee if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

(b) *Additional restriction applicable in certain special Government employees.* (1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section as in the interest of the Government.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

(i) Is appointed by the President;

(ii) Serves on a commission established by statute; or

(iii) has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

(c) *Authorization to serve as an expert witness.* Authorization to serve as an expert witness may be given by the designated agency ethics official of the agency in which the employee serves when, after consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government.

§ 2635.806 Participation in professional associations.

Employees are encouraged to participate in the activities of professional associations and similar entities organized to enhance the skills and abilities of their members. Employees may participate through membership in, and may serve as officers of, such organizations subject to the limitations contained in this part and consistent with paragraphs (a) through (c) of this section. Nothing in this section prohibits an agency from designating an employee to serve in his official capacity as its official liaison to a particular organization in which the agency has a specific interest.

(a) *Participation in substantive programs.* An employee may use official time to attend or otherwise to participate in a substantive program sponsored by a professional association or similar organization when authorized by his supervisor on the basis of a determination that the substantive content of the program relates to the performance of the employee's official duties and that the employee's participation is in the interest of the Government.

(b) *Participation in internal or business affairs.* Unless an employee is specifically authorized by statute, executive order or regulation to serve in an official capacity as an officer of a professional association or similar organization, he may not use official time to administer the internal affairs of any such organization or to carry out its business affairs, or to attend or to participate in meetings or events that primarily serve those purposes. Nothing in this paragraph prohibits an employee from using official time to participate in a substantive program that he is authorized to attend under paragraph (a) of this section if only a small portion of the program is devoted to the internal or business affairs of the organization, or from occasionally using a Government telephone for the conduct of organizational affairs if such use is consistent with the requirements of 41 CFR 201.38.007–1.

(c) *Conflict of interest considerations.* An employee who is not simply a member but who serves, other than in his official capacity, as an officer, director, trustee or employee of a professional association or similar organization is prohibited, in accordance with 18 U.S.C. 208(a) and the standards set forth in subpart D of this part, from participating in his official capacity in any particular matter that has a direct and predictable effect on a financial interest of that organization.

Example 1: An attorney with the Defense Logistics Agency is treasurer of the Federal Bar Association and serves on the association's election committee. She may not use DLA wordprocessing or photocopy equipment nor the Government mails to produce and mail bills for association dues or ballots for the election of officers.

Example 2: An accountant employed by the Defense Contract Audit Agency is a member of the Association of Government Accountants. She has been directed by her supervisor to participate in a panel discussion of cost accounting principles to take place at a seminar sponsored by the association. Because she is authorized to participate in her official capacity, she may participate on official time and use her title in

connection with the panel presentation. In addition, she may use her office word processor to prepare her remarks as a panel member.

Example 3: An attorney employed by the Department of Housing and Urban Development serves as an officer of her local bar association. While she must take annual leave to attend a meeting of the association's officers or to run the internal affairs of the association, she may be authorized to use official time to attend an association meeting on problems of the homeless where her participation is determined to be related to her official duties and in the interest of the Government. To improve her professional skills, she may also be authorized to use official time to attend a seminar on professional conduct sponsored by the association. In the absence of a waiver issued under 18 U.S.C. 208(b), however, she may not direct a subordinate to speak at a seminar sponsored by the association for which an attendance fee is to be charged nor could she sign a training form obligating HUD funds to pay the fee for a subordinate to attend the seminar.

§ 2635.807 Teaching, speaking, and writing.

(a) *Compensation for teaching, speaking or writing.* Except as permitted by paragraph (a)(2) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking, or writing that relates to the employee's official duties.

(1) *Definitions.* For purposes of this paragraph:

(i) Teaching, speaking, or writing *relates to the employee's official duties* if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The invitation to engage in the activity was extended to the employee because of his official position;

(C) The invitation to engage in the activity was extended to the employee, directly or indirectly, by a person who has interests that may be substantially affected by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b) of this part; or

(E) The subject matter focuses specifically on the employee's official duties or on the responsibilities, programs, or operations of the employee's agency. A subject matter focuses specifically on agency responsibilities, programs, or operations if:

(1) In the case of a noncareer employee as defined in § 2636.303(a) of this subchapter, it deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency;

(2) In the case of a special Government employee, it deals in significant part with particular matters to which he is or has been assigned as a special Government employee; or

(3) In the case of any other employee, it deals in significant part with particular matters to which he is or has been assigned as an employee of the agency, or with any planned or announced policy of the agency, or with any program or operation of the agency.

Any component of a department designated as a separate agency under § 2635.203(a) of this part shall be considered a separate agency for purposes of this paragraph. No such designation shall be effective as to the head of any such separate agency or as to department-level employees.

Example 1: On his own time, a National Highway Traffic Safety Administration employee prepares a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide focuses specifically on responsibilities and programs of NHTSA.

Example 2: A consultant is employed as a special Government employee by the Department of State for the purpose of providing advice and assistance in multilateral treaty negotiations relating to scientific research on the continent of Antarctica. A speech given by the special Government employee on the subject of scientific advances stemming from research in the Antarctic is not related to his official duties. However, a speech on the status of the treaty negotiations would be related to his official duties. He may receive compensation for the former, but not for the latter. (Note that special Government employees are not subject to the honorarium prohibition on receipt of compensation for speeches, which is implemented in §§ 2636.201 through 2636.205 of this subchapter).

Example 3: A philosophical article on theories of sentencing in felony cases written by a noncareer Senior Executive Service employee of the Department of Justice would be related to his official duties.

(ii) *Compensation* includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this subpart;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place; or

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking, or writing activity.

(iii) *Receive* means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation, or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(2) *Exception for teaching certain courses.* Notwithstanding that the activity would relate to his official duties under paragraphs (a)(1)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentions by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal government or by a State or local government which is not offered by an entity described in paragraph (a)(2)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though one or more of the twenty classes comprising the course deals with cost accounting principles applicable to contracts with the Government. Moreover, his receipt of a salary or other compensation for teaching this course does not violate the honorarium prohibition on receipt of compensation for any speech, which is

implemented in §§ 2636.201 through 2636.205 of this subchapter.

(3) *Relationship to other limitations on receipt of compensation.* The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this subchapter, including:

(i) The honorarium prohibition on receipt of compensation for an appearance, speech, or article, which is implemented in §§ 2636.201 through 2636.205 of this subchapter;

(ii) The requirement contained in § 2636.307 of this subchapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(iii) The prohibitions and limitations in § 2636.804 of this subchapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

Example 1: A personnel specialist employed by the Department of Labor has been asked by the publisher of a magazine to write an article on his hobby of collecting arrowheads. Even though the subject matter is unrelated to his official duties, he may not accept the publisher's offer of $200 for the article. Because the compensation offered is for an article, its receipt would violate the honorarium prohibition contained in §§ 2636.201 through 2636.205 of this subchapter.

(b) *Reference to official position.* An employee who is engaged in teaching, speaking, or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program, or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking, or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with a scholarly article published in a recognized scientific or professional journal, provided that on the page where his title or position appears, there is a disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank may use, or permit the use of, that term of address or rank in connection with his teaching, speaking, or writing.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data of all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor recently employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the first page of the article also contains a disclaimer, concurred in by the Center, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the Centers for Disease Control.

(c) *Approval of content.* An employee shall comply with any requirement for advance agency review, clearance, or approval of the content of any speech, book, article or similar product.

§ 2635.808 Fundraising activities.

An employee may engage in fundraising only in accordance with paragraphs (b) and (c) of this section.

(a) *Definitions.* For purposes of this section:

(1) *Fundraising* means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) *Participation in the conduct of an event* means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech.

Note: This section does not prohibit fundraising for political parties. However, there are statutory restrictions that apply to political fundraising. Employees, other than those exempt under 5 U.S.C. 7324(d), are prohibited by the Hatch Act, 5 U.S.C. 7321 through 7328, from soliciting or collecting contributions or other funds for a partisan political purpose or in connection with a partisan election. In addition, employees are prohibited by 18 U.S.C. 602 from soliciting contributions for any political purpose from other employees.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost $150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

Example 2: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy. He could, however, pay an entry fee and play in the golf tournament on the same basis as any other entrant, even though his attendance might add prestige to the event. The former constitutes fundraising; the latter does not.

(3) *Official speech* means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(1)(i)(E) of this subpart, or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: A nonprofit organization that raises funds for cancer research has organized a seminar and has invited the

Director of the National Cancer Institute to speak on recent findings by the Institute relating to the treatment of lung cancer. Where the Director determines that the seminar provides an appropriate forum for the dissemination of the information to be presented, the giving of that speech in his official capacity does not constitute fundraising, even though a portion of the attendance fee charged for the seminar may be taken as a charitable deduction by an attendee. The Director would be engaged in fundraising, however, if he were to conclude his official speech with a request for contributions to the nonprofit organization.

Example 2. The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a non-profit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light Program, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 3: A charitable organization is sponsoring a 2-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on Federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g) of this part, he may partake of the meal provided to him at the dinner. However, under subpart B of this part, he may not accept the charitable organization's offer to waive the $1,000 entry fee to allow him to play in the tournament in the absence of a determination of agency interest.

(4) *Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d) of this part. It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) *Fundraising in an official capacity.* An employee shall not participate in fundraising in his official capacity unless specifically authorized by statute, executive order or regulation. For purposes of this paragraph, an employee participates in fundraising in an official capacity when the fundraising is conducted as part of his official duties or involves the use of his Government title, position, or authority.

Example 1: Because participation in his official capacity is specifically authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

Example 2: During an official visit to a homeless shelter, the Secretary of Health and Human Services praises the volunteers whose efforts keep the shelter open and members of the community who provide funding. She expresses her view that the world would be a better place in which to live if every American volunteered a few hours a week and supported the charities in his local community. Her remarks are reported in the press and, as a result of media recognition, contributions to this and other homeless shelters increase. She has not engaged in "fundraising" within the meaning of this section. General remarks of this nature and in this context do not constitute solicitation of funds for a nonprofit organization.

(c) *Fundraising in a personal capacity.* An employee may engage in fundraising in his personal capacity only in accordance with paragraphs (c)(1) and (2) of this section.

(1) An employee who engages in fundraising in a personal capacity shall not:

(i) Personally solicit funds or other support from a subordinate or from any person:

(A) Known to an employee, other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d) of this part; or

(B) Known to a special Government employee to be a prohibited source within the meaning of § 2635.203(d)(4) of this part that is a person whose interests may be substantially affected by performance or nonperformance of his official duties.

(ii) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(iii) Engage in any action that would otherwise violate this part.

Example 1: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 of this part regarding use of Government property.

Example 2: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

Example 3: A Navy Admiral who is the head of his church's building committee may be introduced to the congregation as "Admiral Davey Jones" when he talks about the need for more building funds. The use of his military rank to identify him is not the improper use of his title or position. The addition of his title, "Judge Advocate General of the Navy," would be improper.

(2) An employee holding a position described in 5 U.S.C. 5312 or 5313 or in 3 U.S.C. 105(a)(2)(A) or 106(a)(1)(A) may not engage in fundraising activities in a personal capacity on behalf of an organization unless:

(i) He is personally and actively involved in the affairs of the organization in a manner that involves the use of his personal time; or

(ii) Prior to his appointment to a covered position, he had engaged in fundraising activities on behalf of the organization.

Example 1: The chairman of the Council of Economic Advisers is an active participant in the local alumni chapter of her alma mater. She serves on a committee that arranges speakers for the monthly alumni chapter meetings and, recently, she has participated in a program to encourage promising high school seniors to apply for college scholarships sponsored by the local chapter. Subject to the conditions in § 2635.808(c)(1) of this subpart, she may serve in her personal capacity as chairperson of a dinner to raise funds for the chapter's scholarship program and she may sign the invitation addressed to all area alumni using her name, but not her official title.

Example 2: Prior to his confirmation, the Secretary of the Interior had authorized a charitable organization that raises funds for leukemia research to list his name as one of the 10 sponsors of a fundraising gala held at

the Kennedy Center. he attended the gala but has not otherwise participated in the affairs of the organization. Although his participation in the affairs of the organization has not been personal and active, he may authorize the charitable organization to list his name as a sponsor of this year's fundraising gala since he had engaged in fundraising for the organization prior to confirmation. He may not permit them to use his official title.

§ 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a *just financial obligation* includes any financial obligation acknowledged by the employee or reduced to judgment by a court. *In good faith* means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

Subpart I—Related Statutory Authorities

§ 2635.901 General.

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in § 2635.902 of this subpart references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of interest statutes whose standards are set forth in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

§ 2635.902 Related statutes.

(a) The prohibition against solicitation or receipt of bribes (18 U.S.C. 201(b)).

(b) The prohibition against or receipt of illegal gratuities (18 U.S.C. 201(c)).

(c) The prohibition against seeking or receiving compensation for certain representational services before the Government (18 U.S.C. 203).

(d) The prohibition against assisting in the prosecution of claims against the Government or acting as agent or attorney before the Government (18 U.S.C. 205).

(e) The post-employment restrictions applicable to former employees (18 U.S.C. 207, with implementing regulations at parts 2637 and 2641 of this subchapter).

(f) The post-employment restrictions applicable to former procurement officials (41 U.S.C. 423(f)).

(g) The prohibition against participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (18 U.S.C. 208).

(h) The prohibition on a procurement official's negotiating for employment with competing contractors (41 U.S.C. 423(b)(1)).

(i) The prohibition against receiving salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. 209).

(j) The prohibition against gifts to superiors (5 U.S.C. 7351).

(k) The prohibition against solicitation or receipt of gifts from specified prohibited sources (5 U.S.C. 7353).

(l) The prohibition against solicitation or receipt of gifts from competing contractors (41 U.S.C. 423(b)(2)).

(m) The Code of Ethics for Government Service (Pub. L. 96–303, 94 Stat. 855).

(n) The prohibitions against certain political activities (5 U.S.C. 7321 *et seq.* and 18 U.S.C. 602, 603, 606 and 607).

(o) The prohibitions against disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).

(p) The prohibition against employment of a member of a Communist organization (50 U.S.C. 784).

(q) The prohibition against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (18 U.S.C. 219).

(r) The prohibition against employment of a person convicted of participating in or promoting a riot or civil disorder (5 U.S.C. 7313).

(s) The prohibition against employment of an individual who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).

(t) The prohibition against misuse of a Government vehicle (31 U.S.C. 1344).

(u) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(v) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(w) The prohibition against concealing, mutilating or destroying a public record (18 U.S.C. 2071).

(x) The prohibition against counterfeiting or forging transportation requests (18 U.S.C. 508).

(y) The prohibitions against disclosure of classified information (18 U.S.C. 798 and 50 U.S.C. 783(b)).

(z) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).

(aa) The prohibition against unauthorized disclosure of certain procurement sensitive information, including proprietary or source selection information (41 U.S.C. 423(b)(3) and (d)).

(bb) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(cc) The prohibition against certain personnel practices (5 U.S.C. 2302).

(dd) The prohibition against interference with civil service examinations (18 U.S.C. 1917).

(ee) The prohibition against participation in the appointment or promotion of relatives (5 U.S.C. 3110).

(ff) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).

(gg) The prohibition against conspiracy to commit an offense against or to defraud the United States (18 U.S.C. 371).

(hh) The prohibition against embezzlement or conversion of Government money or property (18 U.S.C. 641).

(ii) The prohibition against failing to account for public money (18 U.S.C. 643).

(jj) The prohibition against embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (18 U.S.C. 654).

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federal register

Tuesday
July 23, 1991

Part III

Department of Education

Research in Education of Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final funding priority.

SUMMARY: The Secretary announces a final funding priority for fiscal year 1991 for the Research in Education of Individuals with Disabilities Program. This program is administered by the Office of Special Education Programs. The Secretary announces this priority to ensure effective use of program funds and to direct funds to an area of identified need during fiscal year 1991.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW, (Switzer Building, room 3095—M/S 2313-2640), Washington, DC 20202. Telephone: (202) 732-1099. (TDD (202) 732-6153).

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, (20 U.S.C. 1441-1443), provides support for advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide those children effective instruction and enable them to learn successfully. This priority provides support for one or more centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder as required by the Education of the Handicapped Act Amendments of 1990. The Conference report accompanying the Department's 1991 appropriations bill expressed the intent that these centers help educators, researchers, and parents to respond to the needs of children with attention deficit disorder (ADD). The intended effect of this priority is to provide access to current research knowledge in two specific areas by providing assistance to organize, synthesize, and disseminate information related to the needs of children with attention deficit disorder (ADD). This priority is part of a response to the 1990 amendments. In addition to this priority, support will also be provided through ongoing contracts to identify promising regular and special education efforts to respond to the educational needs of children with ADD, and to provide a national forum for disseminating this information to professionals and parent organizations.

Because the Department's authority to obligate these funds will expire on September 30, 1991, cooperative agreements will no longer be specified as the type of award.

This priority is in addition to the final priorities previously published in the **Federal Register** on May 7, 1991 for the Research in Education of Individuals with Disabilities Program (56 FR 21226).

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the Notice of Proposed Funding priorities, published on April 9, 1991 (56 FR 14432), four comments were received. One commenter was strongly supportive of the proposed priority as written. The other three commenters, although generally supportive, raised several concerns. An analysis of the comments on the proposed priorities follows.

Comment: One commenter was concerned that these projects not "reinvent the wheel" given the limited amount of funding available, and the current existence of information on ADD and its relation to public education.

Discussion: The Secretary agrees with the commenter on the existence of a significant body of information. The intent of the centers is to make that information accessible to the public, parents, and teachers involved with children and youth with ADD. These centers are designed to disseminate existing knowledge consistent with the commenters' concern not to "reinvent the wheel."

Changes: None.

Comment: One commenter was concerned that most of the available "research" knowledge of ADD and "researchers" are in psychology and medicine, and not in education in general nor special education in particular. The commenter felt that research has mainly been done from the "perspective of clinical treatments and medical regimes", and not from an educational perspective. The commenter suggested that, in order to reinforce the educational perspective, the priority should use the terms "field educators and educational researchers" instead of "educators and researchers," and that perhaps some of the centers should focus on educational research or that some of the center directors should be educational researchers.

Discussion: The Secretary believes that to limit project staff or personnel according to their disciplinary training or professional affiliation would be overly prescriptive, and not supported by either the statute or the regulations. In addition, the selection criteria that will be used to evaluate applications under this competition provide for the peer reviewers to evaluate the "quality of key personnel" proposed by the project. This selection criterion requires reviewers to consider experience and training in fields related to the objectives of the project, as well as other evidence the applicant provides.

Changes: None.

Comment: One commenter was concerned about the perceived order of activities as outlined by the proposed priority. The commenter felt that educators, researchers, and parents needed to provide input on specific information needs before the identification of critical issues.

Discussion: As written, the priority provides that "Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the *needs* of children with ADD" (emphasis added). The Secretary believes that, as written, the priority provides for "information needs" to drive the identification of critical issues.

Changes: None.

Comment: One commenter suggested that the assessment centers include the integration of newly proposed assessment criteria for the ADD population, and a critical review of the empirical data supporting various assessment instruments. The commenter also stated that there are no pathognomonic or highly specific tests that can be used alone to establish the diagnosis of ADD.

Discussion: The Secretary notes that the intent of the priority is to synthesize current knowledge on assessment which includes classification and criteria techniques and systems, and reliable and valid instrumentation. The psychometric properties of assessment instruments will be addressed in the synthesis.

Changes: None.

Comment: One commenter suggested that, with respect to assessment centers, the outcome of this effort should be to integrate current and future assessment tools into a comprehensive evaluation model that could be used in school settings.

Discussion: The Secretary believes that the priority, as written, provides for capturing the existing knowledge and for the review of current assessment instruments that will assist and provide direction for future improvements.

Changes: None.

Comment: One commenter suggested that the intervention centers emphasize integrating the family, educational, and medical perspectives so that comprehensive multi-modality forms of treatment are considered.

Discussion: The Department, in addition to these centers, is funding separate synthesis activities through a contract that will involve these centers to achieve the integration of family, educational, and medical perspectives.

Changes: None.

Comment: One commenter suggested examining the accuracy of data reported by school nurses and teachers, particularly in regard to medical interventions, and the exploration of academic and nonacademic interventions.

Discussion: The Secretary believes that the priority, as written, provides for the centers to look at the full range of interventions being used to meet the needs of students with ADD.

Changes: None.

Priority: The Secretary establishes the following priority for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference under this program to applications that respond to the following priority. The Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority: Centers for Organizing and Analyzing the Research Knowledge Base for Children With Attention Deficit Disorder (CFDA 84.023)

Issue

Section 641(f)(1) of the Individuals with Disabilities Education Act (IDEA), as retitled and amended by the 1990 amendments to the Education of the Handicapped Act, requires the Secretary to establish one or more centers to organize, synthesize, and disseminate current knowledge relating to children with Attention Deficit Disorder (ADD). This current knowledge must be designed to help educators, researchers, and parents respond to the educational needs of students with ADD.

During the reauthorization process, parents and advocates for children with ADD identified access to the current research knowledge base as one of the problems in meeting the needs of their children in school.

Purpose

The purpose of this priority is to organize, synthesize, and disseminate the current knowledge base related to either: (a) Assessment and identification of, or (b) interventions for, children with ADD. This priority will support up to four awards for up to 18 months. These four centers—two for each topic area—must organize and analyze research findings; design, format, and prepare syntheses; and disseminate information to assist educators, researchers, and parents to respond to the educational needs of these children. These centers shall serve as central focal points for making current knowledge accessible to national professional and parent organizations. This information is expected to increase the awareness of educators, researchers, and parents of the current knowledge related to the assessment and identification of, and interventions for responding to, the educational needs of children with ADD. These centers shall have demonstrated knowledge concerning the disorder; proven effectiveness in performing tasks comparable to the ones specified in this priority; and the ability to conduct projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies.

Activities

Each Center shall develop a procedure for, and obtain input from, educators, researchers, and parents for identifying the most critical issues related to either: (a) Assessment and identification, or (b) interventions. These critical issues must provide the focal points for organizing the current research knowledge base and designing syntheses. Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the needs of children with ADD. For purposes of illustration only, critical issues related to assessment and identification might be: Measurement technology for appropriately identifying children with ADD in need of assistance in regular education or in special education; or typologies of educational needs and corresponding estimates of numbers of children with ADD. Similarly, for purposes of illustration, critical issues related to interventions might be: Effective education interventions in regular classrooms for responding to the needs of children with ADD; or the nature of curricula and instructional accommodations, adaptations, and modifications needed to respond to the educational needs of children with ADD.

Designing and formatting syntheses. The critical issues must provide the focus for synthesizing the current research findings. Input must also be obtained from educators, researchers, and parents related to their specific information needs related to each issue. In addition, procedures must be developed and implemented for obtaining feedback from these audiences on the design and format for preparing each of their syntheses. The syntheses must consistently address the characteristics and educational needs of children with ADD relevant to the literature being synthesized.

Organize and analyze current research base. Each center must develop and implement procedures for identifying and obtaining current research findings relevant to each critical issue identified for their topic focus. This information must be organized consistent with the critical issues identified for each topic focus, and need for this information by educators, researchers, and parents. The analyses of this information must address implications for professional personnel practice and preparation, service delivery, and future knowledge development and use agendas for responding to the needs of children with ADD.

National dissemination and exchange forum. Each center must cooperate with the Department in conducting a national forum. The national forum will be held during the 15th month of the award in Washington, DC. Forum participants will include representatives of national organizations representing educators, researchers, parents, and other parties having significant responsibilities and interests in responding to the educational needs of children with ADD. The centers will be responsible for presenting their syntheses and implications. The Forum participants will discuss the centers' syntheses and strength of research support related to implications. The centers shall revise their syntheses taking into account the comments received from forum participants.

Coordination. Each center must coordinate with the other centers funded under this priority, and other projects identified by the Secretary that are engaged in relevant activities for achieving the intent of section 641(f)(1) of the Act. The Department will convene the centers to review their critical issues

prior to the centers conducting their respective syntheses. All projects funded relevant to section 641(f)(1) will be convened at the national forum. Each center must budget for participation in these two activities.

Dissemination activities. Each center shall make its syntheses available to relevant national, professional, and parent organizations. The centers shall develop and implement procedures during these activities to assure that information products are prepared that have the greatest potential for use by these organizations in their existing communication systems and member networks.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: July 12, 1991.

Lamar Alexander,

Secretary of Education.

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Tuesday
July 23, 1991

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 31, et al.
Federal Acquisition Regulation (FAR), Contract Air Fares; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 51, and 52

[FAR Case 91-36]

Federal Acquisition Regulation; Contract Air Fares

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering an amendment to add subpart 51.3, Contractor Use of Government Discount Air Passenger Transportation Fares, and a new clause at 52.251-XX, Government Discount Air Passenger Transportation Fares. The coverage and clause permit contractor personnel traveling under certain Government contracts to use the same discount air fares available to Federal employees traveling at Government expense. A corresponding change to the cost principle at 31.205-46, Travel costs, limits the contractor's recovery of travel costs to the discount air fare provided for in the new subpart. These changes implement the requirements of section 833 of the Department of Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100-456).

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 23, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-36 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC, 20405 (202) 501-4755. Please cite FAR Case 91-36.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act for Fiscal Year 1989, Public Law 100-456, section 833, Air Travel Expenses of Defense Contractor Personnel, requires the General Services Administration to negotiate agreements with airlines to permit certain contractor personnel traveling solely in the performance of Government contracts to receive the same discount air fares Government employees receive when traveling at Government expense. This statute also requires the issuance of regulatory guidance within 120 days after GSA negotiates the first discount air fares contract for contractor personnel. These changes are proposed in compliance with this statute.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed changes should not have a significant administrative impact on a substantial number of small entities. These rates will be readily available through a standard travel agent network already utilized by small entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. However, comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-36) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 31, 51, and 52

Government procurement; Contract air fares.

Dated: July 12, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 31, 51, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 31, 51, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-46 is amended by revising paragraph (d) and the first sentence in paragraph (e)(2) to read as follows:

31.205-46 Travel costs.

* * * * *

(d)(1) Air fare costs, charged as a direct cost to a contract, in excess of the discounted fares established for a primary contract air carrier under a General Services Administration (GSA) contract (see 51.3), are not allowable if—

(i) The discounted rate was available to the contractor, and

(ii) Travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate.

(2) If there is no GSA contract as discussed in paragraph (d)(1) of this subsection, air fare costs in excess of the lowest customary standard, coach, or equivalent air fare offered during normal business hours are unallowable.

(3) The air fares in paragraphs (d)(1) and (d)(2) of this subsection need not be used when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for air fare costs in excess of the standard air fare to be allowable, the applicable condition(s) set forth above must be justified by the contractor. Any travel costs associated with the use of Government discount air fares (e.g., commuting expenses to and from the airport) shall be taken into consideration when determining the applicable air fare under paragraphs (d)(1) and (d)(2) of this subsection.

(e) * * *

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the air fare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. * * *

* * * * *

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

3. The table of contents for subpart 51.3, consisting of §§ 51.300 through 51.306, is added to read as follows:

Subpart 51.3—Contractor Use of Government Discount Air Passenger Transportation Fares

Sec.
51.300 Scope of subpart.
51.301 Definitions.
51.302 Policy.
51.303 General.

Sec.
51.304 Contractor use of contract air carriers.
51.305 Procedures.
51.306 Contract clause.

4. Subpart 51.3, consisting of §§ 51.300 through 51.306, is added to read as follows:

Subpart 51.3—Contractor Use of Government Discount Air Passenger Transportation Fares

51.300 Scope of subpart.

This subpart establishes policies and procedures concerning contractor use of Government discount air fares (refer to section 833 of the Department of Defense Authorization Act for Fiscal Year 1989, Pub. L. 100–456).

51.301 Definitions.

Contract air carrier, as used in this subpart, means a commercial air passenger carrier that has a contract with the General Services Administration to provide air passenger services at discount air passenger transportation fares to Government employees and, when agreed to by the carrier, eligible contractors traveling on official Government business.

Eligible contractor, as used in this subpart, means a contractor performing under a Government contract (other than a firm-fixed price contract) requiring air travel by an employee of the contractor, the cost of which will be charged as a direct cost to the contract.

Primary contract air carrier, as used in this subpart, means: (1) The only contract air carrier listed in the Federal Travel Directory that provides service for a specific city-pair, or (2) the contract air carrier offering a fare lower than any other contract air carrier for the same specific city-pair.

51.302 Policy.

It is the policy of the Federal Government to reimburse eligible contractors for air travel in amounts not to exceed the fares available to Federal employees if a contract negotiated between GSA and the air carrier states that the air carrier will allow authorized eligible contractors to utilize the carrier's services at those air fares. Contractors shall be reimbursed for air travel as provided in 31.205–46(d).

51.303 General.

The General Services Administration negotiates contracts with air carriers for transportation of passengers between specific cities. The primary purpose of the contracts is to provide economical air transportation to Federal employees traveling on official Government business.

51.304 Contractor use of contract air carriers.

(a) Certain of the GSA contracts referenced in 51.302 contain terms that permit eligible contractors to purchase contract fares when traveling on official Government business. These contract air carriers are listed in the Federal Travel Directory (FTD), which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 under Stock Number ISSN 0278–0941.

(b) There is no mandatory requirement for eligible contractors to utilize contract air carriers. Nevertheless, if eligible contractors do not use the contract air carriers, the cost principle in 31.205–46, places limits on the amount of allowable costs for this travel, unless one of the following exceptions applies:

(1) Space or scheduled flights are not available in time to accomplish the purpose of travel, or use of contract service would require the traveler to incur unnecessary overnight lodging costs which would increase the total cost of the trip;

(2) The air carrier flight schedule is inconsistent with explicit company travel policies, where applicable, to schedule travel during normal working hours; or

(3) A non-contract carrier offers a lower fare available to the general public, the use of which will result in a lower total trip cost to the contractor, to include the combined costs of transportation, lodging, meals, and related expenses.

(c) In cities with multiple airports for which contracts have not been awarded on an airport basis, use of a fare in excess of the one offered by the primary contractor must be justified based on one of the exceptions in this section, not on the basis of the convenience of one airport over another to the traveler.

51.305 Procedures.

Some contract air carriers require an agency letter of identification in order for eligible contractors to obtain the reduced air fares. These air carriers are identified in the FTD. The contracting officer shall provide an agency letter of identification, substantially as set forth below, when requested by the contractor. The contracting officer shall complete all information in the letter except that required to be completed by the contractor.

Agency Letter of Identification Required for Eligible Contractor Use of GSA Contract Discount Air Fares

(To be typed on agency official letterhead)

To: GSA Contract Airline

Subject: Official Travel of Government Contractor

The bearer of this letter, identified below, is an employee of (COMPANY NAME), which is under contract to this agency under contract (CONTRACT NUMBER), working directly on the performance of the contract. During the period of the contract (GIVE DATES), the employee will be traveling in performance of the contract. The employee is thereby eligible and authorized to use the GSA contract discount air fares if you have extended such fares to Government contractors in accordance with your city-pairs contract with the General Services Administration. (See contractor authorization below).

_____

_____

_____

(Signature, title and telephone number of the contracting officer)

_____

(Dated signed)

Contractor employee authorized to use GSA contract discount air fares: (To be completed by the contractor)

_____

_____

_____

(Signature, title and telephone number of authorized contractor representative)

_____

(Date signed)

Note: Various discount travel rates are available to eligible Government Contractors only at the option of the vendor under contract and/or agreement with the General Services Administration. The Federal Travel Directory identifies those vendors which have agreed to extend discount contract air fares to Government contractors. Detailed information and procedures should be obtained directly from the Federal contracting agency.

(End of letter)

51.306 Contract clause.

The contracting officer shall insert the clause at 52.251–XX, Government Discount Air Passenger Transportation Fares, in solicitations and contracts when any one of the following situations is contemplated:

(a) A cost-reimbursement contract involving air travel by contractor employees.

(b) A fixed-price contract that provides for cost-reimbursement of air travel by contractor employees.

(c) A fixed-price incentive contract involving reimbursable air travel by contractor employees.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.251–XX is added to read as follows:

52.251-XX Government Discount Air Passenger Transportation Fares.

As prescribed in 51.306, insert the following clause:

Government Discount Air Passenger Transportation Fares (Date)

(a) *Definition—Contract air carrier*, as used in this clause, means a commercial air passenger carrier that has a contract with the General Services Administration to provide air passenger services at discount air passenger transportation fares to Government employees and, when agreed to by the carrier, eligible contractors traveling on official Government business.

(b) The Contractor may use the discount air fares to the extent authorized under the GSA contracts as referenced in the Federal Travel Directory (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, under Stock Number ISSN: 0278-0941). However, if eligible Contractors do not use the contract air carriers, the cost principle in FAR 31.205-46 places a limit on the amount of allowable costs for this travel.

(c) The contract air carrier may require an agency letter of identification in order for Contractors to obtain reduced air fares. The Contractor shall request such agency letter of identification from the Contracting Officer. Duplication of the authorization letter by the Contractor is authorized.

(d) The Contractor shall retain all records of authorized employee travel generated in performance of this contract in accordance with FAR 4.7.

(e) Nothing in this clause shall authorize transportation or services which are not otherwise reimbursable under this contract.

(End of clause)

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federal register

Tuesday
July 23, 1991

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15 and 52
Federal Acquisition Regulation (FAR), Make or Buy Decisions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAR Case 91-34]

Federal Acquisition Regulation; Make or Buy Decisions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amending the Federal Acquisition Regulation (FAR) at sections 15.705 through 15.708 and the provision at 52.215–18 to permit the contracting officer to request additional data, list the factors for evaluation on the make or buy program, and provide the dollar threshold for items to be included in the program.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 23, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91–34 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR Case 91–34.

SUPPLEMENTARY INFORMATION

A. Background

The recommended proposed rule is a result of the Defense Management Review and originated with the Regulatory Relief Task Force. The proposed language was deleted from the Defense Federal Acquisition Regulations Supplement (DFARS) and is recommended for insertion in the FAR because it is applicable to all Federal buying activities.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because make or buy plans only apply to contracts over $5 million which are generally awarded to large businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 91–34) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 15 and 52:

Government procurement; Make or buy decisions.

Dated:

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.705 [Removed]

2. Section 15.705 is removed.

3. Section 15.706 is redesignated as new 15.705 and paragraph (a) is revised to read as follows:

15.705 Evaluation, negotiation, and agreement.

(a) Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award. If the program is to be incorporated in the contract (see 15.706) and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added to the program pursuant to the clause at 52.215–21, Changes or Additions to Make-or-Buy Program.

* * * * *

4. Section 15.707 is redesignated as 15.706.

15.707 [Redesignated]

5. Section 15.708 is redesignated as new 15.707 and amended by revising the section heading, adding paragraph (a), and designating the existing text as paragraph (b) to read as follows:

15.707 Solicitation provision and contract clause.

(a) When prospective contractors are required to submit proposed make-or-buy programs (see 15.703), the solicitation shall include the provisions at 52.215–XX, Make-or-Buy Program.

(1) The contracting officer shall insert in paragraph (b)(1) of the provision an appropriate dollar figure in accordance with 15.704.

(2) The contracting officer shall insert in paragraph (b)(8) of the provision any additional information required.

(3) The contracting officer shall insert in paragraph (c) of the provision a description of the factors to be used in evaluating the proposed program, or an appropriate reference to Section M of the solicitation. Examples of factors are listed in 15.705(d).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.215–21 is amended by revising the introductory text to read as follows:

52.215–21 Changes or additions to make-or-buy program.

As prescribed in 15.707(b), insert the following clause:

* * * * *

7. Section 52.215–XX is added to read as follows:

52.215–XX Make-or-Buy Program.

As prescribed in 15.707(a), insert the following provision:

Make or Buy Program (Date)

(a) Definitions. *Buy item,* as used in this provision, means an item or work effort to be produced or performed by a subcontractor.

Make item, as used in this provision, means an item or work effort to be produced or performed by the prime Contractor or its affiliates, subsidiaries, or divisions.

Make-or-buy program, as used in this provision, means that part of a Contractor's written plan for a contract identifying (1) those major items to be produced or work efforts to be performed in the prime

Contractor's facilities; and (2) those to be subcontracted.

(b) The offeror shall submit with its proposal, a written make-or-buy program covering the proposed procurement, supported by the following information:

(1) A description of each major item or work effort. The program should not include items or work efforts estimated to cost less than $_____.

(2) Categorization of each major item or work effort as "must make", "must buy", or "can either make or buy".

(3) For each item or work effort categorized as "can either make or buy" a proposal either to "make" or to "buy".

(4) Reasons for (i) categorizing items and work efforts as "must make" or "must buy" and (ii) proposing to "make" or to "buy" those categorized as "can either make or buy". The reasons must include the consideration given to the evaluation factors described in paragraph (c) herein and be in sufficient detail to permit evaluation.

(5) Designation of the plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(6) Identification of proposed subcontractors, if known, and their location and size status.

(7) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(8) In addition, the following information shall be included in the offeror's make or buy program:

_____

_____

(c) The following factors shall be used to evaluate the proposed make-or-buy program:

_____

_____

_____

(d) The Government reserves the right to review and agree on the Contractor's make-or-buy program when necessary to ensure (1) negotiation of reasonable contract prices, (2) satisfactory performance, or (3) implementation of socioeconomic policies.

(End of provision)

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July 23, 1991

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 5460 and 5470
Sales Administration: Contract Modification—Extension—Assignment; Interim Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

RIN 1004-AB56

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

Sales Administration: Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends provisions of existing regulations in 43 CFR part 5470—Contract Administration—Modification—Assignment. The existing regulations are being amended to provide more fairness and flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by the expiration date. The rule provides the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations.

DATES: Effective July 23, 1991. Comments will be accepted until September 23, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

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

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there are many factors outside the timber purchaser's control that limit the operating time on a contract. These include court injunctions, weather conditions, fire closures, and actions taken by the Federal government to protect cultural and biological resources. Under the current regulations, there are no provisions to extend timber contracts, without reappraisal, when delays are caused by any of the above factors. This interim rule is intended to provide more fairness and flexibility in granting timber sale contract extensions, without reappraisal, because of unusual circumstances that are beyond the control of the purchaser.

A proposed rule was published on July 3, 1990 (55 FR 27477). The purpose of this proposal was to allow contract extensions up to 30 days of operating time without reappraisal when the delay of harvest was due to extreme weather conditions or fire closures imposed by State agencies. After the proposed rule was published, the northern spotted owl was listed under the Endangered Species Act. This listing imposed another limitation on the opportunity to harvest timber within the contract period. It has made it necessary for the BLM to suspend operations on many previously executed timber sale contracts while conferences on the sales were held with the Fish and Wildlife Service (FWS) to determine the impact these sales might have on the spotted owl. These delays will in some cases make it impossible for the purchaser to complete cutting and removal in the time specified in the timber sale contract.

Under the procedures set forth in the current regulations, the Bureau of Land Management (BLM) cannot extend the time for cutting and removal on these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when he was prevented from doing so by the Government. This would likely result in lawsuits against the Government by companies whose expectations under timber sale contracts were frustrated.

Because of the additional delay resulting from the spotted owl listing and the public comments received on the proposed rule, the BLM expanded the proposed rule to address other delays caused by actions of the Federal Government. A reproposed rule was issued to allow the public an opportunity to comment on the changes from the original proposed rule. The reproposed rule was published in the **Federal Register** on June 25, 1991 (56 FR 28850-28852). The comment period was limited to 10 days because several timber contracts are scheduled to expire and performance has been impossible through no fault of the timber purchasers. Some commenters on the reproposed rule have indicated that they believe more time is needed for public review and comment. Because of the need to extend timber contracts that will expire between July 22 and September 30, 1991, and to prevent penalizing purchasers for circumstances beyond their control, an interim rule is being issued to take effect upon publication but allow the public an additional 60 days to comment after the effective date. All comments received within the prescribed time will be considered in the decisionmaking process on the issuance of the final rule.

The BLM received eight letters containing comments on the reproposed rule. Six letters were from associations, one from a law firm, and one from a manufacturing firm. The specific comments contained in these letters and the responses to the comments are listed below:

1. One comment stated that extensions for "acts of God" should be allowed for periods exceeding one year. The comment recommended that the final rule contain specific language that allows the Secretary of the Interior to grant longer extensions for extraordinary situations. The reproposed rule provided for additional extensions to be granted upon written request of the purchaser and this provision is found in the last sentence of § 5473.4(a) in the interim rule.

2. Two comments suggested that § 5473.4(a) be amended to include a provision for extensions of over 30 days without reappraisal when delay was caused by flood, landslide, or other "acts of God". BLM considers it is reasonable to permit only one 30-day extension without reappraisal as provided for under § 5473.4(b). The BLM views "acts of God" as risks of doing business that should be considered in the cost of doing business when bidding on timber sales. This rule is intended to provide protection to the purchaser from certain unanticipated actions taken by the Government or caused by actions of the Government. This suggestion was not adopted.

3. A comment suggested including cases where BLM requests operations be delayed due to a request from a political office of State, local, or Federal Government. BLM does not have any authority to require a purchaser to delay timber operations due to a request from a political office and, therefore, would not require a purchaser to delay his operations on the basis of such a request. This suggestion was not adopted for inclusion in the interim rule.

4. A comment suggested that delays caused by any closure by a State or local government, not just fire closures, should be considered as justification for

an extension without reappraisal. It is unlikely that any closure other than for fire would be imposed by a State or local government that would delay harvest of timber from Federal lands. This suggestion was not adopted.

5. A comment suggested that, in the case of a delay caused or requested by the Government, it should not be the purchaser's responsibility to request an extension and an extension should be automatically awarded. It is not the intention of this rule to automatically grant an extension for every delay that was caused by the Government's actions. There are various types of delays caused by the Government that would be of short duration and would not seriously affect the purchaser's ability to complete the contract in the time allowed in the contract for completion. Timber sale contracts usually allow more than adequate time for completion and a short delay should not prevent completion in the allotted time. This interim rule is intended to provide a means for allowing additional time in those cases where there is an extraordinary need for such additional time. The purchaser is in the best position to determine whether such a need exists and to communicate such need to the BLM. This suggestion was not adopted.

6. Two comments pointed out that § 5473.4(b) was unclear as to what conditions must be met in order for the contracting officer to grant an extension without reappraisal. This section was revised to clarify that the conditions listed in the first sentence of § 5473.4(a) would apply.

7. One comment suggested that the last sentence of § 5473.4(b) be deleted because it is or could be interpreted to be unduly restrictive. This is true in part and the sentence has been revised to clarify that only one extension would be granted without reappraisal under § 5473.4(b).

8. One comment recommended that the last sentence of § 5473.4(b) be removed because purchasers can be faced with numerous but totally unrelated delays in the completion of sales, all of which justify an extension of under 30 days without reappraisal. Another comment stated that an additional 30 days without reappraisal is not enough time to offset significant short-term delays. Incidental delays are considered in determining the amount of time needed to complete a contract and for most timber operations, contract extensions are not considered until the end of the contract term after the purchaser has made a good faith effort to complete the contract within the time allotted. BLM considers it is reasonable to permit only one 30-day extension without reappraisal.

9. Two comments suggested that a new subparagraph be added to § 5473.4(c) to read: "(6) Other Delay Caused or Requested by the United States or Any State or Local Government Agency". One comment suggested that both state and local agencies be referenced in § 5473.4(a). The reproposed rule covered all situations that the BLM believes are likely to occur and place an undue burden on the purchaser because of the requirement for reappraisal upon granting an extension. The language suggested by this comment would be too broad and would tend to make the rule vague and subject to variation in interpretation. The suggestion was not adopted.

10. Two comments suggested that the requirement that the purchaser show a good faith effort to perform the contract in order to qualify for an extension under § 5474.4(c) may be an unduly high standard and inappropriate in some circumstances. For example, when an injunction is issued shortly after a contract is awarded, it may be difficult if not impossible for a purchaser to prove that a good faith effort has been made to perform the contract. The standard for a good faith effort on the part of the purchaser is reasonable. The time that a purchaser has had to perform will be considered by the contracting officer in determining whether a good faith effort has been made. A purchaser will not be expected to perform any more than what the average prudent operator would be expected to perform in a like time period. The suggestion was not adopted.

11. One comment recommended that § 5473.4(c)(5) be broadened to include restricted hours of operation imposed by State fire protection agencies. Restricted hours of operation are normally applied during the fire season and are considered in the time necessary to cut and remove timber. This recommendation was not adopted.

12. Two comments were received concerning the existing provision for extending green timber sale contracts for harvesting an extensive amount of salvage timber resulting from natural or manmade causes. One comment stated that allowing a timber purchaser an extension on a green timber sale in order to operate on a salvage sale provides the purchaser with a windfall that might not be in the public interest. Additionally, one comment recommended that § 5473.4(e) be dropped because it allows salvage volume to be added to an existing contract after the environmental analysis and public review has been completed. It is necessary to redirect harvesting operations into salvage timber in order to recover such timber before it is lost to decay, insects, or disease, or before it causes insect or disease infestations of nearby green timber. This section of the regulations does not grant authority to add additional salvage volume to an existing timber sale. Such volume can only be added by modifying the timber sale contract. All timber contracts and any modifications thereof must comply with the National Environmental Policy Act, the Council of Environmental Quality regulations, and the environmental policies and procedures of the Department of the Interior and the BLM. Therefore, no change from the current regulations was proposed.

13. A comment suggested that extensions on green timber sales should be granted for harvesting salvage timber from any lands, not just Federal lands, and that the proposal should provide an explicit waiver of reappraisal for such extensions. There is adequate logging capacity on private lands so that any necessary salvage operations could be accomplished by redirecting logging activity from green timber to salvage timber. Therefore, this suggestion was not adopted.

14. A comment stated that the reproposed rule does not provide a legally acceptable process for approving requests for contract extensions in that it vests undue discretion in the contracting officer, limits the agency's opportunity to evaluate requests, and precludes meaningful public review. A contracting officer regularly makes decisions involving timber sale contracts and is the appropriate person to make judgments on the merits of an application for extension. Requests for contract extensions are handled by the agency as procedural matters and are not open for public comment.

15. Four comments stated that the 10-day comment period was too short to give the public an adequate opportunity to review and comment on the reproposed rule. Another comment requested that the proposed rule be republished with a 30-day comment period or that a 30-day extension of time be granted to review the proposal. The comment period was set at 10 days in order to allow for public review and yet implement new regulations that would provide for the extension of several timber contracts, without reappraisal. These contracts were delayed because of the requirement for the BLM to consult with the Fish and Wildlife Service concerning the effects that

timber harvesting would have on the northern spotted owl. The legal action involving the spotted owl has the unintended effect of making it impossible for some contractors to perform their contracts within the contract period. Because these contracts will expire between July 22 and September 30, 1991, which in all fairness should be extended, without reappraisal, to prevent penalizing purchasers for circumstances beyond their control, an interim rule is being adopted that will take effect upon publication but still allow the public to submit comments 60 days after the effective date. All comments received will be considered in the decisionmaking process on the issuance of the final rule.

The interim rule published today incorporates many changes suggested in response to the original proposed rule, as well as changes suggested on the reproposed rule. Editorial changes have been adopted to make the regulations more clear. The rule provides that an extension may be granted for time lost as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by the requirements for consultation with the FWS under the Endangered Species Act; (3) reviews for cultural resource values; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions will provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above will be granted without reappraisal.

The rule also provides that short extensions of up to 30 days of operating time may be granted without reappraisal, if the cause for delay in cutting or removal was beyond the control of the purchaser and was without his fault or negligence.

It is hereby determined under 5 U.S.C. 553(d)(3) that good cause exists to make this interim rule effective immediately, because 4 contracts for purchase of Federal timber will require reappraisal upon extension if the effective date is delayed. Given the current economic situation in the timber industry, the purchasers, which entered and performed under the contracts in good faith, would have to make a substantial financial outlay to extend the reappraised contracts, performance of which has been delayed because of consultation required by the Endangered Species Act, and not by any dereliction of performance on the part of the purchasers. Moreover, the rule is predominately procedural and merely permits contracts in force to be completed in accordance with the reasonable expectations of the parties.

The principal author of this interim rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this interim rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule will not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR 5460

Forests and forest products, Government contracts, Public lands.

List of Subjects in 43 CFR 5470

Forests and forest products, Government contracts, Public lands.

For the reasons stated above, and under the authorities cited below, parts 5460 and 5470 of Group 5000, subchapter E, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

PART 5460—SALES ADMINISTRATION [AMENDED]

1. The authority citation for part 5460 is revised to read:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

§ 5463.1 [Amended]

2. Section 5463.1 is amended by removing the phrase "§§ 5463.2 and 5473.1" at the end of the section and replacing it with the term "Subpart 5473".

§ 5463.2 [Removed]

3. Section 5463.2 is removed.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

4. The authority citation for Part 5470 is revised to read:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

5. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

6. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request of the purchaser. Such extension shall not exceed one year, and shall require a reappraisal if the delay was not imposed by the United States or any State government agency under paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time without reappraisal, not to exceed 30 days of operating time, if the conditions set out in the first sentence of paragraph (a) of this section are met. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing satisfactory to the contracting officer that a good faith effort was made to fulfill the contract prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resource values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) As used in this section, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest, as salvage from Federal lands, timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

3. Section 5473.4–1 is amended by revising paragraph (a) to read as follows:

§ 5473.4–1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the contracting officer of the material sold will be in accordance with this section.

* * * * *

Dated: July 19, 1991.

Peter W. Niebauer,

Acting Assistant Secretary of the Interior.

[FR Doc. 91–17643 Filed 7–22–91; 8:45 am]

BILLING CODE 4310–84–M

federal register

Tuesday
July 23, 1991

Part VII

The President

Presidential Determination No. 91-45—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 1991

Presidential Documents

Title 3—

Th President

Presidential Determination No. 91–45 of July 8, 1991

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $7,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet the unexpected and urgent needs of refugees and other displaced persons in the Western Sahara. A total of $7,000,000 will be contributed to the United Nations High Commissioner for its activities in the Western Sahara.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

[FR Doc. 90–17640
Filed 7–19–91; 4:57 pm]
Billing code 3195–01–M

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102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

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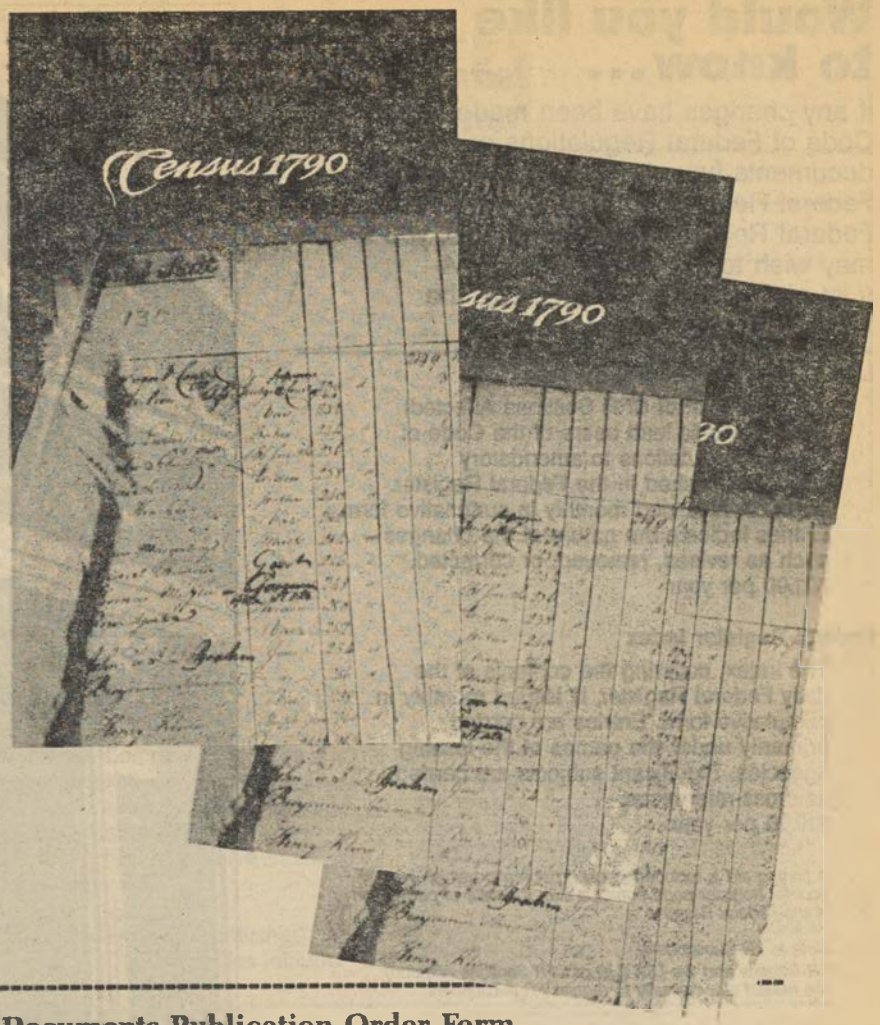

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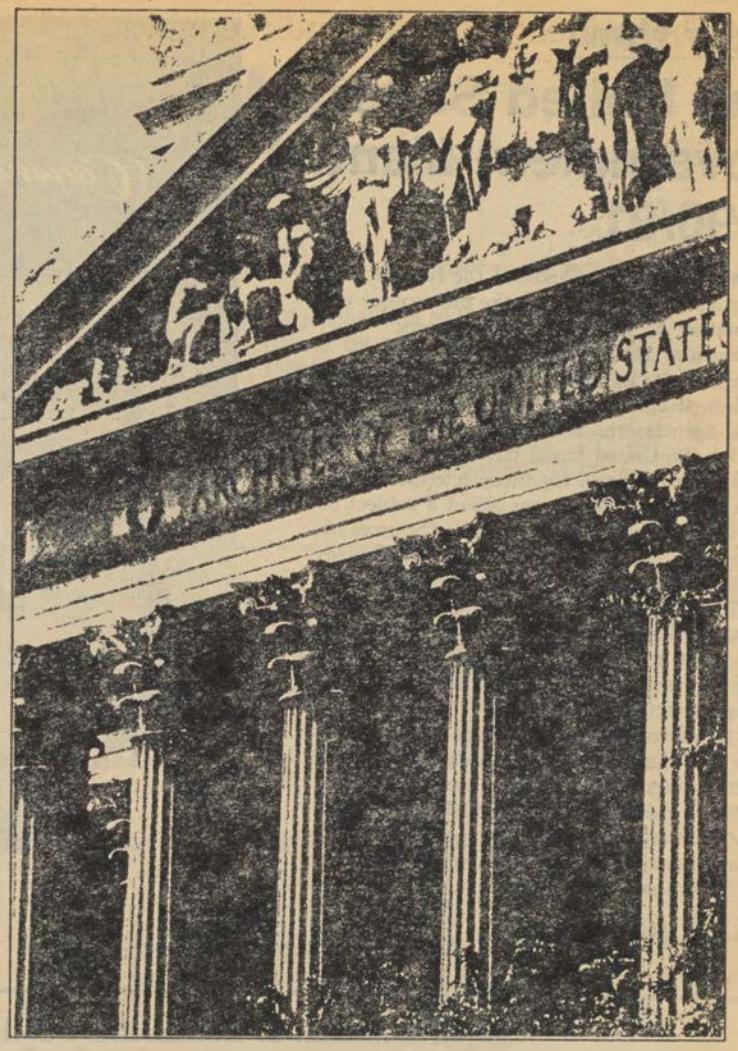

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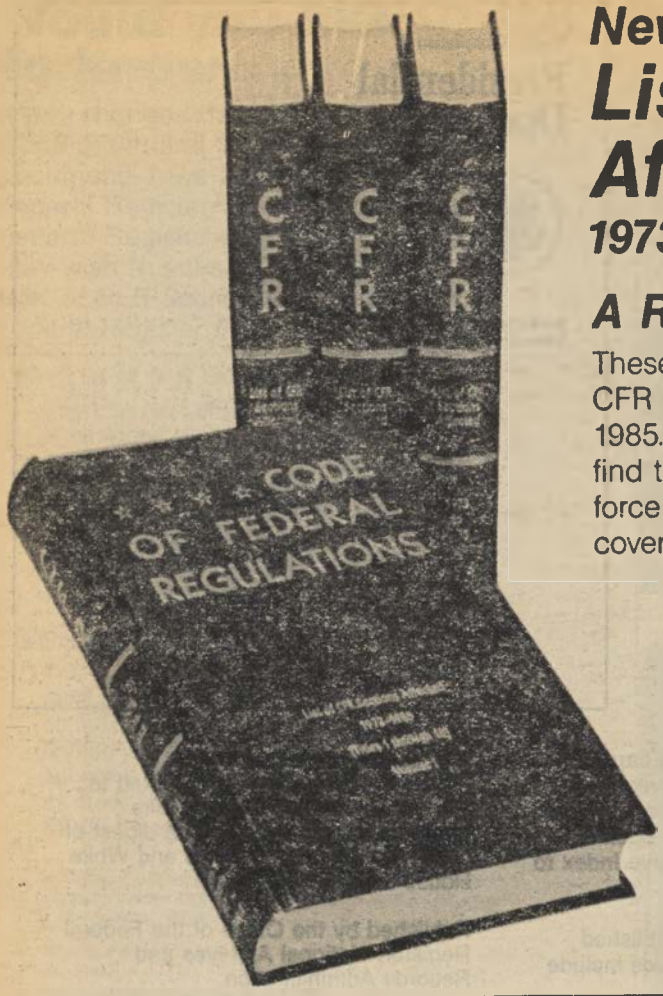

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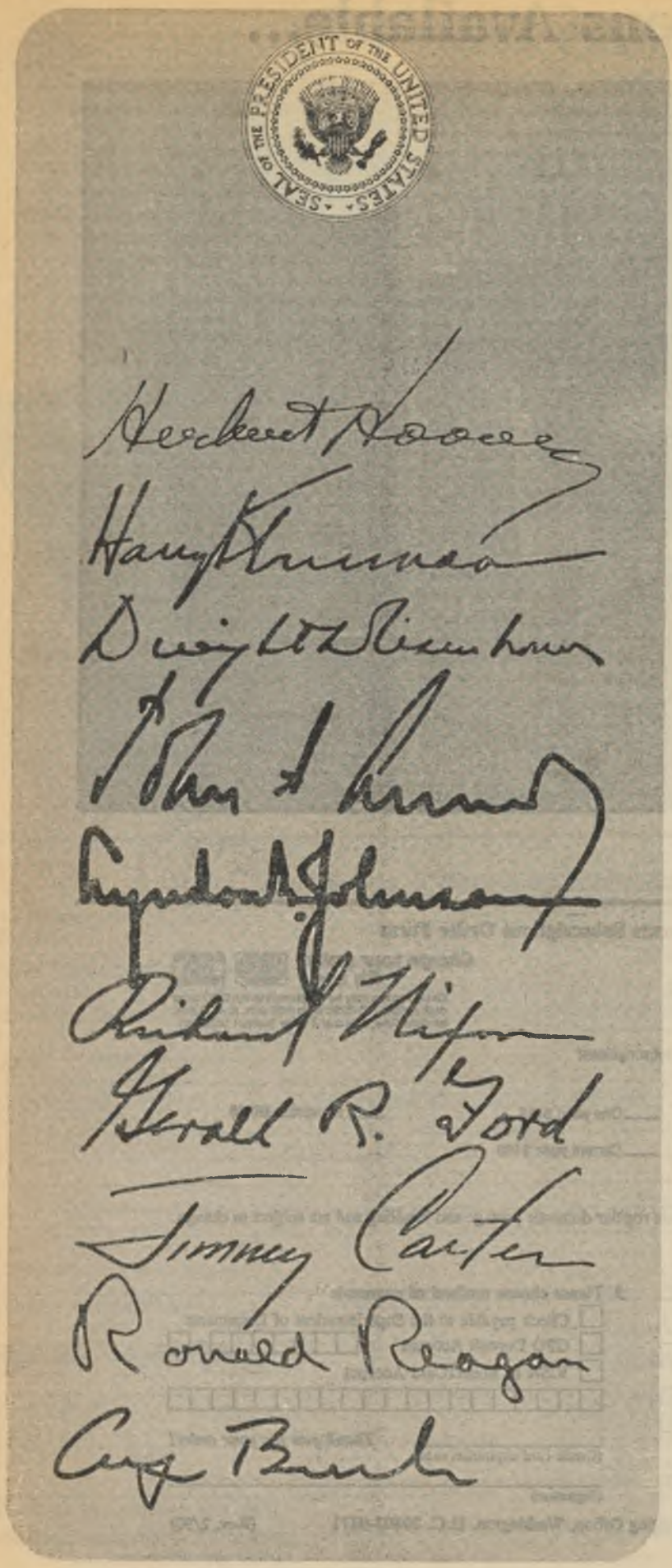

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